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Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Judges of the International Tribunal for the Former Yugoslavia

Judges of the International Criminal Tribunal for Rwanda

Ad litem judges of the International Tribunal for the Former Yugoslavia

Ad litem judges of the International Criminal Tribunal for Rwanda

Report of the Secretary-General*

I. Introduction

1. In section III, paragraph 9, of its resolution 59/282, the General Assembly decided that the conditions of service and compensation for the members of the International Court of Justice (ICJ), and the judges and ad litem judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (ICTR) would next be reviewed at its sixty-first session. In the same resolution, the

* The submission of this report was delayed owing to the need to conduct several rounds of extensive consultations with the subject officials.

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General Assembly also made a number of specific requests that are addressed in the present report.

2. In order to facilitate consideration of the variety of issues to be reviewed, the present report is presented as follows: section II is devoted to the remuneration of the members of ICJ and the judges and ad litem judges of ICTY and ICTR; section III focuses on the other conditions of service of the members of ICJ and the judges and ad litem judges of ICTY and ICTR; and Section IV contains an analysis, recommendations and financial implications in respect of remuneration, including adjustment for currency fluctuation and cost of living, and in respect of other conditions of service, including pensions and the next comprehensive review.

II. Remuneration

A. International Court of Justice

3. Article 32 of the statute of ICJ provides, inter alia, that each member of the Court shall receive an annual salary (para. 1), that the salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office" (para. 5).

B. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

4. By its resolution 827 (1993), the Security Council decided to establish ICTY and adopted its Statute. Article 13, paragraph 3, of the Statute of ICTY provides that the terms and conditions of service shall be those of the judges of ICJ. By its resolution 955 (1994), the Security Council decided to establish ICTR and adopted its Statute. Article 12, paragraph 5, of the Statute of ICTR provides that the terms and conditions of service shall be those of the judges of ICTY.

5. In his report to the General Assembly at its fifty-third session (A/C.5/53/11), the Secretary-General made proposals for revised salaries and revised pensions for the members of ICJ, and corresponding revisions to the salaries and pensions of the judges of the International Tribunals in the light of what the Assembly might determine for the members of ICJ. The General Assembly, in section VIII, paragraph 4, of its resolution 53/214, approved the recommendations of the Advisory Committee on Administrative and Budgetary Questions on the emoluments of the judges of ICTY and ICTR.

C. Ad hoc judges in the International Court of Justice

6. Under article 31 of the Statute of the International Court of Justice, persons whom parties to cases before the Court choose "to take part in the decision on terms of complete equality with their colleagues" (para. 6) are known as ad hoc judges. Under article 32, paragraph 4, of the Statute, they "shall receive compensation for each day on which they exercise their functions". The historical background to the determination of the amount of that compensation was presented in the report of the Secretary-General to the General Assembly at its fortieth session (A/C.5/40/32, paras. 35-41).

7. The General Assembly, in paragraph 3 of its resolution 48/252 A, decided that, with effect from 1 January 1994, the ad hoc judges referred to in article 31 of the ICJ Statute should receive for each day they exercise their functions, one three hundred and sixty fifth of the annual salary payable at the time to a member of the Court. On the occasion of the 1995 review, the Secretary-General proposed that no change be made in these arrangements. The General Assembly, in part IV, paragraph 2 of its resolution 50/216 concurred with that proposal. On the occasion of the 1998 periodic review, the Secretary-General proposed that no change be effected in the arrangements. The General Assembly, in section VIII, paragraph 2, of its resolution 53/214 concurred with that proposal.

D. Ad litem judges in the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

8. The Security Council, acting under Chapter VII of the Charter of the United Nations, by its resolution 1329 (2000), decided to establish a pool of ad litem judges in ICTY.

9. The General Assembly was requested to consider the approval of the conditions of service for ad litem judges as proposed by the Secretary-General (A/55/756, paras. 18-25). The Advisory Committee on Administrative and Budgetary Questions, in paragraph 7 of document A/55/249, drew attention to the fact that judges of ICJ were elected for a term of nine years and might be re-elected, and judges of the Tribunals were elected for a term of four years and might be re-elected. On the other hand, the service of the ad litem judges was of a much more temporary nature and could be intermittent. This essential difference was taken into account by the Advisory Committee in evaluating the necessity of a number of the entitlements and allowances proposed in the report of the Secretary-General.

10. Accordingly, the Advisory Committee agreed with the Secretary-General's proposals concerning the annual salary of the ad litem judges to be prorated for length of service.

11. In its resolution 55/249, the General Assembly endorsed the observations and recommendations of the Advisory Committee (A/55/806, paras. 7-15), on the emoluments of the ad litem judges of ICTY.

12. In its resolution 1431 (2002), the Security Council decided to establish a pool of ad litem judges in ICTR. In his report (A/57/587), the Secretary-General proposed to establish conditions of service applicable to the ad litem judges of ICTR based on the provisions of General Assembly resolution 56/285, on the emoluments and other conditions of service of the members of ICJ and the judges of ICTY and ICTR and the ad litem judges of ICTY.

13. In its resolution 57/289, the General Assembly endorsed the observations and recommendations of the Advisory Committee (A/57/593, para. 23) on the conditions of service for the ad litem judges of ICTR.

E. Review

14. The General Assembly has conducted periodic reviews of the emoluments of the members of the Court and the judges and ad litem judges of ICTY and ICTR, the most recent comprehensive review having been undertaken at the fifty-ninth session of the General Assembly. On that occasion, the Secretary-General noted in his report (A/C.5/59/2, paras. 84, 85 and 86) that the emoluments of the members of the Court had remained at US$ 160,000 since January 1999 and that no revisions in the level of salaries was sought in the 2001 triennial review of the conditions of service. He also noted that, according to official statistics of the Netherlands provided by the Court, the consumer price index for the Netherlands for the period from 1 January 1999 to 31 May 2004 had increased by 17.4 per cent. He recalled that, over the two-year period from January 2002 to July 2004, the United States dollar had lost, on average, 26.8 per cent against the euro, with the result that the emoluments of the members of ICJ, overall, had not kept pace with increases in the cost of living in the Netherlands. While the application of the floor/ceiling mechanism at the 2003 rates provided significant protection against the weakening of the United States dollar vis-à-vis the euro, it did not provide total protection and, in real terms, the salaries of the judges had lost 4.35 per cent. The Secretary-General also recalled that the salaries of staff at the Under-Secretaries-General level had been increased by 6.3 per cent effective 1 January 2003. Accordingly, the Secretary-General proposed that the Member States might wish to consider increasing the annual emoluments of the members of the Court, the judges of ICTY, the judges of ICTR and the ad litem judges by 10.6 per cent, from US$ 160,000 to US$ 177,000.

15. The Advisory Committee, in its report (A/59/557, para. 6), concurred with the proposal of the Secretary-General. The Advisory Committee also found a number of uncertainties with regard to the current system, since the cost of living did not fluctuate evenly at all places where the judges of ICJ and of the Tribunals sat. The Secretary-General should be requested to make proposals for the future that would take that factor into account.

16. In section III, paragraph 4, of its resolution 59/282, the General Assembly decided to increase the annual salary of the members of ICJ and the judges and ad litem judges of the Tribunals by 6.3 per cent, effective 1 January 2005, as an interim measure pending a decision to be taken on proposals requested for the sixty-first session, which are presented in the present report. Accordingly, the annual salary of

the members of the Court and the judges of the two Tribunals was revised from US$ 160,000 to US$ 170,080 per annum, effective 1 January 2005. The Assembly also agreed with the recommendation of the Secretary-General to continue the floor/ceiling mechanism applied to protect the emoluments against fluctuations of the exchange rates of the euro to the United States dollar, which have been kept at the 2003 levels until the comprehensive review of the compensation and conditions of service to be conducted at the General Assembly's sixty-first session.

17. The emoluments of the members of the Court are sui generis. However, on the occasion of the periodic comprehensive reviews of the emoluments and conditions of service of the members of the Court, information on the net remuneration of senior Secretariat officials, of the Chairman of the Advisory Committee, of the Chairman and Vice-Chairman of the International Civil Service Commission (ICSC) and of the members of the Joint Inspection Unit, as well as the gross emoluments of the president and members of the highest courts in national judiciaries of a number of States and of international courts have been provided as reference points for purposes of comparative assessment. Annexes I and II to the present report illustrate information concerning the evolution of emoluments from January 2000 to January 2006. Annex I compares the movement of the judges' total emoluments with changes in the remuneration of senior Secretariat officials and that of full-time members of subsidiary bodies of the United Nations. Annex II provides information obtained, with the assistance of the Court and Permanent Missions to the United Nations, on the movement of gross emoluments of the president and members of the highest courts in a number of national judiciaries. Annex II also provides information on the movement in emoluments of the president and members of the Court of the European Communities in Luxembourg and the International Criminal Court in The Hague, as well as the emoluments of the president and members of the European Court of Human Rights in Strasbourg. For purposes of information, annex III contains a summary of the salaries of an Under-Secretary-General serving in The Hague, the members of the Court and the judges of the International Criminal Court in euro terms and their equivalent in United States dollar terms at the official United Nations operational rate of exchange for the month concerned.

F. Currency floor/ceiling mechanism

18. In April 1987, ICSC introduced the concept of a local currency floor and ceiling at a number of duty stations, including The Hague, to protect staff against the weakening of the dollar. In his report to the General Assembly at its forty-eighth session (A/C.5/48/66, paras. 11-15), the Secretary-General explained the concept and how it would function if applied to the emoluments of the members of the Court. Based on the methodology proposed by the Secretary-General and, as recommended by the Advisory Committee on Administrative and Budgetary Questions and approved by the General Assembly, the floor/ceiling rates are set at 4 per cent below and 4 per cent above the average exchange rate of the euro vis-à-vis the United States dollar of the previous year.

19. For the year 2002, the United States dollar weakened vis-à-vis the euro and the average exchange rate was €1.07 to US$ 1.00. On this basis, for 2003, the floor/ceiling exchange rates were revised to €1.0272 and €1.1128, respectively. The floor exchange rate of €1.0272 to the United States dollar resulted in a currency

floor of €13,696 per month and the ceiling exchange rate of €1.1128 to the United States dollar resulted in a currency ceiling of €14,837 per month.

20. For the year 2003, the United States dollar continued to weaken vis-à-vis the euro. The average exchange rate for 2003 was €0.8958 to US$ 1.00 representing a decrease of 16.3 per cent over the average exchange rate for 2002. On this basis, for 2004, the floor/ceiling exchange rates would have been revised to €0.86 and €0.93163, respectively. As a consequence, the amount of €12,421 which would correspond to the ceiling amount for 2004 would have been much lower than the floor level amount of €13,696 corresponding to the monthly emoluments received by the members of ICJ and the judges of the Tribunals during the 12 months of 2003.

21. The above situation was not unprecedented. In 1996 and 1997, when the value of the United States dollar fell dramatically between the periodic review of the conditions of service of the members of the Court, the Assistant Secretary-General for the Office of Human Resources Management wrote to the Chairman of the Advisory Committee on Administrative and Budgetary Questions recalling the provisions of article 32, paragraph 5, of the Statute of ICJ which specifies that the remuneration and allowances of the members of the Court "shall be fixed by the General Assembly" and "may not be decreased during the term of office". Accordingly, the Office of Human Resources Management advised the Advisory Committee that pending the next comprehensive review of the conditions of service for the members of the Court, it had been found reasonable to continue to apply in 1996 the floor/ceiling ratio for 1995. The ratio was also maintained in 1997 for the same reasons. On the basis of that precedent, and bearing in mind the continued trend in the weakening of the United States dollar vis-à-vis the euro, the Assistant Secretary-General of the Office of Human Resources Management advised the Advisory Committee, pending the comprehensive review of the conditions of service of the members of ICJ and the judges of the Tribunals in 2004, of the proposal to follow the same approach and to use in 2004 the floor/ceiling rates used for 2003.

22. Consequently, the floor/ceiling rates of €1.0272 and €1.1128, respectively, applied in 2003 for the purpose of effecting monthly payments in euros to the members of ICJ and the judges of ICTY and those judges of ICTR serving in The Hague were applied in 2004. As noted above, for 2005 and until the next comprehensive review, it was decided to continue the floor/ceiling mechanism applied to effect the payment of the emoluments of the judges at the floor/ceiling exchange rates of the euro to the United States dollar which were kept at the 2003 levels, i.e., €1.0272 and €1.1128, respectively. Based on the revised annual salary of US$ 170,080, or US$ 14,173 per month that came into effect as of 1 January 2005, the floor exchange rate of €1.0272 to the dollar resulted in a currency floor of €14,559 per month and the ceiling exchange rate of €1.1128 to the dollar, resulted in a currency ceiling of €15,772 per month.

23. Table 1 below indicates the official exchange rate for the euro against the United States dollar for the period from January 2002 to September 2006.

Table 1
Exchange rate of the euro to the United States dollar, January 2002-September 2006

Month	*2002*	*2003*	*2004*	*2005*	*2006*
January	1.136	0.958	0.801	0.737	0.845
February	1.162	0.931	0.804	0.765	0.827
March	1.158	0.929	0.804	0.757	0.844
April	1.143	0.929	0.820	0.771	0.827
May	1.108	0.868	0.844	0.773	0.784
June	1.065	0.849	0.816	0.797	0.778
July	1.019	0.875	0.821	0.829	0.793
August	1.016	0.877	0.831	0.827	0.784
September	1.015	0.922	0.831	0.820	0.780
October	1.022	0.875	0.812	0.832	
November	1.017	0.852	0.786	0.855	
December	1.009	0.842	0.754	0.850	

24. Over the 56-month period from January 2002 to September 2006, the floor amount has been payable for 52 months. On this basis, it can be seen that the floor/ceiling mechanism used to regulate emoluments against the weakening/strengthening of the dollar has served to limit the diminution of the emoluments of the members of ICJ expressed in euros when the dollar weakened against the euro, since 2003. It can be noted that since January 2002, the United States dollar lost, on average, 30 per cent against the euro.

25. In section III, paragraph 3, of its resolution 59/282, the General Assembly requested the Secretary-General, in future reports on the conditions of service of the members of the Court and the judges of the Tribunals, to present clearly information on annual salaries payable in both United States dollars and the applicable local currency, with full information on the actual dollar requirements for the budget concerned.

26. Table 2 below sets out the salaries of the members of the Court and the judges of ICTY and ICTR serving in The Hague in euro terms and their equivalent in United States dollar terms at the official United Nations operational rate of exchange for the month concerned as well as the salaries of the judges of ICTR serving in Arusha expressed in United States dollars.

Table 2

Salaries of the members of the International Court of Justice and judges of ICTY and ICTR[a] serving in The Hague expressed in euros and equivalent in United States dollars and salaries of judges of ICTR serving in Arusha expressed in United States dollars, January 2004-September 2006

Month and year	*Judges serving in The Hague (Euros)*	*Judges serving in The Hague (United States dollars)*	*Judges serving in Arusha (United States dollars)*
January 2004	13 696	17 099	13 333
February 2004	13 696	17 035	13 333
March 2004	13 696	17 035	13 333
April 2004	13 696	16 702	13 333
May 2004	13 696	16 227	13 333
June 2004	13 696	16 784	13 333
July 2004	13 696	16 682	13 333
August 2004	13 696	16 481	13 333
September 2004	13 696	16 481	13 333
October 2004	13 696	16 867	13 333
November 2004	13 696	17 425	13 333
December 2004	13 696	18 164	13 333
Total 2004	**164 352**	**202 984**	**160 000**
January 2005	14 559	19 754	14 173
February 2005	14 559	19 031	14 173
March 2005	14 559	19 232	14 173
April 2005	14 559	18 883	14 173
May 2005	14 559	18 834	14 173
June 2005	14 559	17 541	14 173
July 2005	14 559	17 562	14 173
August 2005	14 559	17 604	14 173
September 2005	14 559	17 755	14 173
October 2005	14 559	17 499	14 173
November 2005	14 559	17 028	14 173
December 2005	14 559	17 128	14 173
Total 2005	**174 706**	**217 851**	**170 080**
January 2006	14 559	17 229	14 173
February 2006	14 559	17 604	14 173
March 2006	14 559	17 250	14 173
April 2006	14 559	17 604	14 173
May 2006	14 559	18 569	14 173
June 2006	14 559	18 713	14 173

Month and year	*Judges serving in The Hague (Euros)*	*Judges serving in The Hague (United States dollars)*	*Judges serving in Arusha (United States dollars)*
July 2006	14 559	18 259	14 173
August 2006	14 559	18 570	14 173
September 2006	14 559	18 665	14 173

[a] There are currently two judges of ICTR on the Appeals Chamber serving in The Hague.

III. Other conditions of service

27. The other conditions of service of the members of ICJ include the special allowance of the President and Vice-President when acting as President, the compensation of ad hoc judges, education allowance, health insurance, survivors' benefits, travel and subsistence regulations and retirement benefits.

28. The background of other conditions of service of the members of ICJ is provided in the report of the Secretary-General to the General Assembly at its forty-eighth session.[1]

29. In section VIII, paragraph 4, of its resolution 53/214, the General Assembly approved the recommendations of the Advisory Committee on, inter alia, the other conditions of service of the judges of the Tribunals. The background on other conditions of service of the judges of the Tribunals is provided in the report of the Secretary-General to the General Assembly at its fifty-second session (A/52/520, paras. 19-21). These other conditions of service include the special allowance of the President and Vice-President when acting as President, education allowance, health insurance, survivors' benefit, travel and subsistence regulations and retirement benefits.

A. Special allowance of the President and Vice-President when acting as President

International Court of Justice

30. Article 32 of the Statute of the Court provides that the President shall receive a special annual allowance (para. 2) and that the Vice-President shall receive a special allowance for each day on which he acts as President (para. 3). As is the case with remuneration, these allowances "shall be fixed by the General Assembly" and "may not be decreased during the term of office" (para. 5). In its resolution 31/204, the General Assembly provides that the allowances "shall be reviewed concurrently with the periodic review of their annual salary" (para. 3).

31. Prior to 1980, the President's special allowance had historically been set at 24 per cent of salary. Similarly, the special daily allowance for the Vice-President when acting as President had been set at a ceiling amount equivalent to 62.5 per cent of the President's allowance for 100 days as Acting President. On the occasion of the 1980 periodic review, no increase in the allowance was proposed, although the annual base salary rose by 40 per cent (from US$ 50,000 to US$ 70,000). The President's allowance remained at 24 per cent of US$ 50,000, i.e., US$ 12,000. In 1983, the Secretary-General suggested that the 24 per cent relationship between the

special allowance of the President and the annual base salary should be restored, thereby raising the allowance from US$ 12,000 to US$ 16,000 as of 1 January 1985. It was also proposed that the allowance of the Vice-President be increased by a corresponding amount, from US$ 76 to US$ 104 per day. The Advisory Committee did not support the proposal of the Secretary-General. It was of the view that a fixed ratio between the special allowances and the annual base salary should not be applied and, in 1985, the allowance was set at a flat amount of US$ 15,000. From 1981 to 1985, the allowance represented 17.4 per cent of the annual base salary and 14.6 per cent of the adjusted emoluments, including the cost-of-living supplement (base salary of US$ 70,000 + cost-of-living supplement of US$ 12,000 = US$ 82,000).

32. In the context of the 2001 review of conditions of service, the Secretary-General recalled that the General Assembly had decided in its resolution 50/216 that the President's special allowance should remain at US$ 15,000 a year and that the special daily allowance paid to the Vice-President when acting as President should remain at US$ 94 per day, subject to a maximum of US$ 9,400 per year (A/C.5/56/14, para. 18). The Secretary-General also informed the General Assembly that the Court had made representations that, although the Court's workload had increased dramatically, both special allowances had remained unchanged since 1985 and that the Registry of ICJ had recommended that the President's allowance be increased, with a similar percentage increase in the allowance of the Vice-President when acting as President (A/C.5/56/14, paras. 19 and 20). The Secretary-General suggested that consideration be given to increasing the special allowance of the President from US$ 15,000 to US$ 20,000, which would apply to the President of ICJ as well as to the Presidents of ICTY and ICTR. A commensurate increase would also be given to the special allowance paid to the Vice-Presidents of these courts when acting as President, resulting in an increase from US$ 94 to US$ 125 per day, subject to a maximum of US$ 12,500 per year (A/C.5/56/14, para. 91). The Advisory Committee recommended against this proposal (A/56/7/Add.2, para. 5). The recommendation was endorsed by the General Assembly in its resolution 56/285 and no further action has been taken on the subject.[2]

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

33. As mentioned above, the General Assembly, in section VIII, paragraph 4, of its resolution 53/214, approved the recommendations of the Advisory Committee on, inter alia, the other conditions of service of the judges of the two Tribunals. Based on the General Assembly decision, the special allowance of the Presidents of the Tribunals was set at US$ 15,000 per annum. The special allowance for the Vice-Presidents of the Tribunals was set at US$ 94 per day up to a maximum of US$ 9,400 per year.

B. Assistance with education costs

34. The background to the issue of assistance with education costs, as applied to the members of the Court, is provided in paragraphs 24 to 29 of document A/C.5/48/66.

35. In 2004, the Secretary-General proposed that, further to resolution 45/250 C, the increase in the level of education grant (including that for disabled children) effective 1 January 2003, applicable to staff in the Professional and higher categories approved by the Assembly in part I.E of resolution 57/285 should be extended, under the same conditions, to the members of the Court, the judges of the Tribunals as from the school year in progress on 1 January 2003 (A/C.5/59/2, para. 91). The General Assembly, in section I.E of its resolution 59/268, approved, as from the school year in progress on 1 January 2005, increases in the maximum reimbursement levels for 15 countries, as well as other recommendations in respect of the reimbursement of expenses under the education grant, as recommended in paragraphs 166 (a) to (f) of the report of the International Civil Service Commission.[3] In this regard, the Advisory Committee secretariat clarified that, although the report of the Committee (A/59/557), had not specifically addressed the extension to ICJ members and the judges of the Tribunals the level of the grant approved by General Assembly resolution 59/268, the revised levels of education grant that came into effect as from 1 January 2005 should also apply to the members of ICJ and the judges of the Tribunals.

C. Health insurance

36. With regard to participation of the members of ICJ in the Organization's health plan and the Organization's contribution to the charges to sustain participation therein in a manner comparable to the health contributions made by the United Nations for other such officials, the Secretary-General, in his report to the General Assembly at its fifty-sixth session (A/C.5/56/14, para. 27), reiterated the view expressed previously that, while the Secretary-General and the two full-time members of ICSC and the Chairman of the Advisory Committee were participants in the Headquarters health plan, the Organization did not contribute to the cost of participation. Members of ICJ, in addition to their current option of joining the Delta Lloyd health insurance plan of the United Nations system, retained the option of joining the Van Breda plan, or the Headquarters health plan if they choose to retire in the United States, upon payment of the full cost of the premium.

37. With regard to the participation of members of the Court in health insurance plans of the United Nations system, the Advisory Committee, in paragraph 8 of its report (A/56/7/Add.2), reiterated its view that the members of ICJ should cover the total cost of their participation in the health insurance plans and that the Organization should not have to contribute at all to the cost of their participation.

38. The Secretary-General notes that the Organization has made provisions for the judges of the Tribunals, upon their appointment, to participate in an appropriate United Nations medical insurance plan in accordance with the relevant administrative rules and procedures, at full premium.

D. Survivors' benefit

39. Concerning the establishment of a survivors' lump sum benefit in the event of the death of serving members of ICJ, the General Assembly, in its resolution 40/257 C, approved the recommendation of the Advisory Committee to establish, in addition to the existing pension scheme, a death-benefit scheme for the members of ICJ. Under the provisions adopted by the General Assembly, survivors of members of ICJ who die while in office are compensated in the form of a lump-sum payment equivalent to one month of salary for each year of service, subject to a minimum of three months and a maximum of nine months of salary. This lump-sum benefit is distinct from the applicable survivors' pension benefits.

40. Concerning the establishment of a survivors' lump-sum benefit in the event of the death of serving judges of the Tribunals, based on its consideration of the note by the Secretary-General (A/C.5/54/30), the General Assembly, in paragraph 7 of its resolution 54/240 A, approved the recommendations of the Advisory Committee and established a lump-sum benefit whereby survivors would be compensated in the form of a lump-sum equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of four months.

E. Travel and subsistence regulations

41. In its resolution 37/240, the General Assembly approved the travel and subsistence regulations of ICJ. In section VIII, paragraph 5, of its resolution 53/214, the General Assembly also approved the travel and subsistence regulations of the judges of the Tribunals contained in annex III to the report of the Secretary-General (A/52/520).

42. In 2001, the Secretary-General pointed out that, as a result of the action taken by the General Assembly in section I.E of its resolution 44/198, the entitlement under installation grant was discontinued and replaced by the introduction of the assignment grant, effective as from 1 July 1990 (A/C.5/56/14, para. 97). In the light of a number of questions of interpretation concerning the entitlement to installation grant provisions, especially as they apply to the judges of ICTR, the Secretary-General proposed and the Advisory Committee recommended that the language contained under the travel and subsistence regulations applicable to the members of the Court and the Tribunals, respectively, be updated and that the reference to "installation grant" be revised to make reference to the "assignment grant" provisions applicable to senior officials of the Secretariat of the United Nations. The General Assembly accepted the recommendation in its resolution 56/285.

F. Issues related to the hardship classification of the duty station

43. On the occasion of the periodic review undertaken in 2001, the President of ICTR recalled that the Statute of ICTR provides in article 12, paragraph 5, that the terms and conditions of service for the judges of ICTR shall be those of the judges of ICTY. This is a general principle that does not exclude that there is a difference between duty stations of the judges of these two Tribunals.

44. She further specified that, unlike their colleagues from ICTY, the judges of ICTR were working in Arusha, which had been officially recognized as a category C

hardship duty station, where home leave entitlement for staff of the Tribunal was once every 12 months. Consequently, it would seem logical since the cycle of home leave normally reflected the hardship factor at the duty station that the hardship factor should be made applicable to the judges' home leave.

45. In paragraph 9 of its report (A/56/7/Add.2), the Advisory Committee indicated that it had no objection to the proposed change in the home leave travel of the judges of ICTR to take account of the hardship classification of the duty station. In its resolution 56/285, the General Assembly concurred with the recommendation of the Advisory Committee.

G. Retirement benefits

46. The members of ICJ are entitled to retirement pensions in accordance with article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly.

47. A review of the pension benefits and the corollary aspects of the pension scheme were presented in the reports of the Secretary-General to the General Assembly at its forty-eighth, forty-ninth, fiftieth and fifty-third sessions.[4]

48. During the fifty-third session of the General Assembly, in response to the request of the General Assembly, the Secretary-General provided an actuarial analysis covering the design of the pension scheme, the methodology used to determine pensionable remuneration, contributory participation, and retirement benefits, including early retirement and surviving spouse pension benefits (A/C.5/53/11).

49. Based on the analysis and findings of the consulting actuary's report, the Secretary-General believed that the pension scheme for the members of ICJ should provide adequate after-service benefits to judges having met the requisite eligibility criteria relating to retirement age and period of service based on the premise that the pension benefit maintains a standard of living as replacement income.

50. At the same session, the Advisory Committee agreed with the recommendations made by the Secretary-General in paragraph 40 (a), (c), (d) and (f) of his report (A/C.5/53/11),concerning revisions to the pension scheme regulations of the members of ICJ (A/53/7/Add.6, paras. 15-17). However, in paragraphs 18 to 21 of its report, the Advisory Committee recommended that the pension benefit would be based on half the annual salary of US$ 160,000, i.e. US$ 80,000. Under the circumstances, the Advisory Committee did not believe that it was necessary to continue affecting pension benefits for judicial service in excess of nine years, especially since the Court pension scheme was non-contributory and recommended that, henceforth, there no longer be an increase in pension benefit for re-elected judges. The Advisory Committee also recommended that pensions in payment be automatically revised by the same percentage and at the same data as salary adjustments.

51. In section VIII, paragraph 1, of its resolution 53/214, the General Assembly approved the recommendations of the Advisory Committee on the emoluments, pensions and other conditions of service of the members of ICJ.

52. In the 2001 review of the conditions of service, the Registrar of ICJ provided the Secretariat with a table listing pensions in payment and observed that pensions were disproportionate for retired members of the Court and/or surviving spouses. In order to rectify that inequity and to have all former members of the Court treated equally, the Court opined that pensions in payment should ideally be aligned with pensions under the present regime. However, the Advisory Committee in its 1998 report (A/53/7/Add.6) considered that such an alignment would not be advisable because it would entail considerable expense for the United Nations. In view of that, the Court did not ask for alignment of pension stricto sensu. However, concerned as it was by the level of pension payments to former members, the Court suggested that steps could be taken to remedy the disparity in payments by an increase, to the extent possible, in pension payments to its former members.

53. In this regard, it was the view of the Secretary-General that, as the General Assembly was the sole authority to determine the conditions of service and pension benefits of ICJ, the issue of pension payments should be brought to the attention of the General Assembly for its consideration. In its report (A/56/7/Add.2, para. 10), the Advisory Committee pointed out that a pension entitlement was established at the time of retirement and the conditions of service in effect at that time. Moreover, the Advisory Committee recalled that it had recommended and the General Assembly had approved a recommendation that pensions in payment be automatically revised by the same percentage and at the same date as salary adjustments; the Committee was of the view that the recommendation continued to provide the necessary protection for pensions in payment against an increase in the cost of living.

54. The Registrar of the Court wrote to the Secretariat in April 2004 to express concerns with respect to the level of pensions for judges and surviving spouses. He noted that, unlike any other pension scheme, pensions for judges and surviving spouses were not protected in value. Pensions were set in United States dollars and, in the event of a conversion to the currency of the country of payment or residence of the judges or surviving spouses, drastic deterioration in value often resulted in both Europe and other non-United States dollar zones. The Registrar also reviewed what would have been the easiest and optimum solution to the problem of protecting pensions paid outside the United States dollar zone, i.e., the application of an appropriate floor/ceiling methodology, as was currently used in relation to emoluments. He noted, however, that for those pensioners who elected to be paid in United States dollars, the application of the methodology would be potentially detrimental because if the ceiling rate of exchange were to be reached, payments in dollars would be reduced. Consequently, for those pensioners residing in the United States dollar zone or holding their bank account in the United States, the application of the ceiling in the pensions context would be inappropriate and therefore should not be applied to these pensioners. In the light of the above, the Registrar indicated that the following alternate means of protecting the value of pensions may be envisaged, such as:

(a) The extension of an appropriate floor/ceiling mechanism to the currency either of the pensioner's country of residence or of the country where pension remittances were sent;

(b) The introduction of the option for a pensioner to elect, once and for all at the date of the initial pension entitlement, to receive all future pension entitlements

fixed in local currency or United States dollars (for pensions paid now or in the future in the euro zone the fixed rate could be the euro rate of exchange at the date of introduction of the euro);

(c) The application of the two-track system, currently used in respect of the United Nations Joint Staff Pension Fund;

(d) In the euro zone, the option to be paid the same figure either in euros or in dollars.

55. In his previous report (A/C.5/59/2, paras. 94 and 95), the Secretary-General, following his recommendation that emoluments of the members of ICJ and the judges of the Tribunals be increased from US$ 160,000 to US$ 177,000, stated that based on the decision of the General Assembly contained in section VIII of its resolution 53/214 to set the retirement pension for the members of ICJ at half the annual salary, the annual retirement benefit of a member of the Court retiring in 2005 would increase from US$ 80,000 per annum to US$ 88,500 with effect from 1 January 2005 and that, based on the proposed increase in the base salary of the members of ICJ, it was recommended that pensions in payment be increased by 10.6 per cent, effective 1 January 2005. He also mentioned that, as ICJ was concerned by the effect of the devaluation of the United States dollar vis à vis the euro on the level of pension payments to former members, that ICJ would appreciate it if steps could be taken to remedy the disparity in payments by an increase, to the extent possible, in pension payments to former members. It was the view of the Secretary-General that consideration should be given to applying the floor/ceiling mechanism to pensions in payment to former judges and their survivors who resided in the euro zone countries to protect the level of pensions from further erosion.

56. In its review of the report of the Secretary-General, the Advisory Committee, in paragraphs 8 to 11 of its report (A/59/557) commented as follows. Regarding retirement benefits, the Advisory Committee noted that the annual retirement benefit of a member of the Court retiring in 2005 would increase from US$ 80,000 to US$ 88,500 per annum, effective 1 January 2005. That was consequential to the proposed increase in the salaries of the members of the Court and the judges of the Tribunals to US$ 177,000 and was pursuant to the decision of the General Assembly contained in section VIII of its resolution 53/214, which set the retirement pension for the members of ICJ at half the annual salary. In paragraph 95 of his report (A/C.5/59/2), the Secretary-General had indicated that based on the proposed increase in the base salary of the members of the Court, it was recommended that pensions in payment be increased by 10.6 per cent, effective 1 January 2005. In view of its previous recommendation, the Advisory Committee had no objection to that proposal. The Secretary-General had further indicated that consideration should be given to applying a floor/ceiling mechanism to pensions in payment to former judges and their survivors residing in the euro zone countries to protect the level of their pensions. However, the Committee was of the opinion that the approach proposed was too narrow, taking into account that the Registrar of the Court, in the letter addressed to the Secretariat in April 2004, had indicated the drastic deterioration in value that often resulted "both in Europe and other non-United States dollar zones" (see A/C.5/59/2, para. 44). The Advisory Committee therefore recommended further elaboration of the proposal, including consideration of other options that could protect the pensions in payment to former judges and their survivors. Moreover, the Committee was of the opinion that the Secretariat should

avail itself of the experience of ICSC in applying floor/ceiling arrangements to salaries. The results of such a review would be presented to the General Assembly at its resumed fifty-ninth session.

57. In its resolution 59/282, the General Assembly decided with retroactive effect from 1 January 2005, to increase the annual value of all pensions in payment by 6.3 per cent as an interim measure and, pending a decision based on the report requested below, requested the Secretary-General to submit a comprehensive report to the General Assembly at its sixty-first session, including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that limit the divergence of such remuneration from that of comparable positions of seniority within the United Nations system, on the protection of pensions in payment to former judges and their survivors as well as on the differences between the pension benefits of the judges of the two Tribunals on the one hand and the members of the Court on the other.

58. In paragraph 29 of its report (A/53/7/Add.6), the Advisory Committee recommended the pension benefit for the judges of the two Tribunals be based on that applicable to the members of ICJ, prorated to account for the difference in length in the terms of appointment, that is to say, nine years for the members of ICJ versus four years for the judges of both Tribunals.

59. In section VIII, paragraph 4, of its resolution 53/214, the General Assembly approved the recommendations of the Advisory Committee on the emoluments, pensions and other conditions of service of the judges of the Tribunals. In paragraph 6 of the resolution, the Assembly approved the pension scheme regulations for the judges of both Tribunals contained in annexes IV and V, respectively, to the report of the Secretary-General (A/52/520), with consequential modifications resulting from the decisions taken by the General Assembly in the resolution.

60. On the occasion of the comprehensive review conducted in 2001, the Secretary-General shared the concerns that had been expressed by the judges of ICTY regarding the Pension Scheme Regulations approved by the General Assembly at its fifty-third session (A/C.5/56/14, paras. 60-67). The Advisory Committee noted the Secretary-General's view that the existing disparity between the pension benefits of the judges of ICTY and those of the members of ICJ should be brought to the attention of the General Assembly. The Advisory Committee observed that the Assembly had approved a pension scheme for the judges of the Tribunals based on its previous recommendations whereby the Committee had recommended that the pension benefits of the judges of the Tribunals be based on those applicable to the judges of ICJ, prorated to account for the difference in the length in the term of appointment, namely, nine years for the members of the Court versus four years for the judges of the Tribunals. The Advisory Committee reiterated its view on the matter and therefore did not recommend any change in the current arrangement with regard to the pension benefits of judges of the two Tribunals.

61. On the occasion of the 2004 review, ICTY requested that the concerns that had been expressed by the judges of the Tribunal regarding the Pension Scheme Regulations on the occasion of the review in 2001 be brought once again to the attention of the General Assembly (see A/C.5/59/2, para. 63). Accordingly, some of the salient arguments set out in the report of the Secretary-General (A/C.5/56/14, paras. 65-67) were reiterated.

62. In a joint letter dated 13 July 2006, the President and the Registrar of ICTY again drew to the attention of the Secretary-General the great concern of the judges of the Tribunal regarding the disparity between the pension entitlements of ICTY judges and judges of ICJ, and made proposals to address this disparity which would require amending the pension scheme for the judges of the Tribunal. The letter cites six cases of ICTY and ICJ judges who come into and demit office on precisely the same dates, it shows how, after a four-year period, the pension of the ICTY judge was lower than his ICJ counterpart notwithstanding that, at the time of demitting office, they would both have earned the same monthly, yearly and aggregate salary and given the same years of service, an outcome that was clearly at variance with the requirements of the Statute drafted by the Security Council that the terms and conditions of the ICTY judges be those of the ICJ judges. The full text of the letter is contained in annex IV to the present report. The President and the Registrar of ICTR in a joint letter dated 28 August 2006 also expressed to the Secretary-General the concern of the ICTR judges concerning the disparity in pensions between ICTY and ICJ judges and the fact that ICTR judges fully subscribe to the views expressed in the 13 July 2006 letter. The full text of that letter is contained in annex V.

63. Finally, in his report (A/C.5/57/36), the Secretary-General drew the attention of the General Assembly to the fact that under the Pension Scheme Regulations applicable to the members of the Court and the judges of the two Tribunals, there was no provision that would bar payment of a retirement pension to judges who had previously served in any one of those organs while serving as judges in another of those organs. Based on the recommendation of the Advisory Committee, the General Assembly, in its resolution 58/264, decided to amend article 1 of the Pension Scheme Regulations of the members of the Court to specify that no retirement pension would be payable to a former member who had been elected or appointed a permanent judge of ICTY or ICTR or who has been appointed to serve in ICTY or ICTR as an ad litem judge until he or she ceased to hold office or appointment. The Assembly also decided to amend article 1 of the Pension Scheme Regulations of the judges of ICTY and the judges of ICTR, respectively. Accordingly, paragraph 5 of article 1 of the Pension Scheme Regulations of the judges of ICTY specifies that no retirement pension would be payable to a former judge who had been elected a member of ICJ or who had been elected or appointed a permanent judge of ICTR or who had been appointed to serve in the ICTY or the ICTR as an ad litem judge until he or she ceased to hold office or appointment. Paragraph 5 of article 1 of the Pension Scheme Regulations of the judges of ICTR specifies that no retirement pension would be payable to a former judge who had been elected a member of ICJ or who had been elected or appointed a permanent judge of ICTY or who has been appointed to serve in ICTY or ICTR as an ad litem judge until he or she ceased to hold office or appointment.

H. Ad litem judges

64. The Security Council, acting under Chapter VII of the Charter of the United Nations, in its resolution 1329 (2000), decided to establish a pool of ad litem judges in ICTY and to amend the Statute of ICTY accordingly.

65. The General Assembly, in its resolution 55/225 A, inter alia, took note of Security Council resolution 1329 (2000) and decided to revert, at its resumed fifty-fifth session, to the consideration of resource requirements for the implementation

of modifications to the statute of the Tribunal, without prejudice to the nomination and election of the ad litem judges.

66. Under paragraphs 1 (e) and 2 of article 13 ter of the Statute of ICTY ad litem judges shall be elected for a term of four years and they shall not be eligible for re-election. During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. Paragraph 1 (a) of article 13 quater of the Statute of the Tribunal specifies that during the period in which they are appointed to serve in the Tribunal, ad litem judges shall benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the Tribunal. However, ad litem judges would be entitled to receive benefits only once they had been appointed to serve on one or more trials and, if they are so appointed, they would be so entitled only for as long as and in respect of the period that they are so appointed.

67. In response to General Assembly resolution 55/225 A, the Secretary-General submitted a report (A/55/756) on the conditions of service of the ad litem judges of ICTY. His recommendations, contained in paragraphs 18 to 25 of the report, related to emoluments, travel and subsistence benefits, education allowance, survivors' lump-sum, benefit, general conditions and medical insurance.

68. The Secretary-General also recommended that ad litem judges not be entitled to pension benefits. He further specified that a judge who had retired from ICTY, ICTR or ICJ and was the recipient of a pension therefrom, would not continue to receive that pension during the time he or she served as an ad litem judge. Any period of service as an ad litem judge would not be counted towards and added for years of qualifying service that a judge might have with ICTY, ICTR or ICJ for pension purposes.

69. Concerning the establishment of disability benefits for ad litem judges, it was recognized by the Organization that there was a need to take care of disability payment in respect of a service period. Therefore, it was proposed that should an ad litem judge be found unable to perform his or her duties because of ill health or disability, he or she would be entitled to receive payment of his or her salary for the service period. There would be no liability beyond that period.

70. By virtue of the limitation on their length of appointment, and taking into account the conditions applied to the permanent judges, ad litem judges would not be eligible for payment of relocation allowance.

71. In its report (55/249, para. 7), the Advisory Committee drew attention to the fact that judges of ICJ were elected for a term of nine years and might be re-elected, and judges of the Tribunals were elected for a term of four years and might be re-elected. On the other hand, the service of the ad litem judges was of a much more temporary nature and could be intermittent. That essential difference was taken into account by the Advisory Committee in evaluating the necessity of a number of the entitlements and allowances proposed in the report of the Secretary-General.

72. Accordingly, the Advisory Committee agreed with the proposals of the Secretary-General concerning the level of annual salary, prorated for length of service and with application of the floor-ceiling measures, the proposal to extend the travel and subsistence regulations in effect for the judges of the Tribunals be applied

to the ad litem judges, and with the proposal to provide disability benefits limited to injury or illness attributable to service with the Tribunal.

73. In its resolution 55/249, the General Assembly endorsed the observations and recommendations of the Advisory Committee (A/55/806, paras. 7-15), on the emoluments, travel and subsistence regulations and disability payments for the ad litem judges of ICTY.

74. By its resolution 1431 (2002), the Security Council decided to establish a pool of ad litem judges in ICTR. In his report (A/57/587), the Secretary-General proposed to establish conditions of service applicable to the ad litem judges of ICTR based on the provisions of General Assembly resolution 56/285, on the emoluments and other conditions of service of the members of ICJ and the judges of the Tribunals and the ad litem judges of ICTY.

75. In its resolution 57/289, the General Assembly endorsed the observations and recommendations of the Advisory Committee (A/57/593, para. 23), on the conditions of service for the ad litem judges of ICTR.

IV. Review and recommendations

A. Remuneration

76. In reviewing the level of annual remuneration, it is recalled that as a result of the action taken by the General Assembly in paragraph 4 of its resolution 59/282, the annual salary of the members of ICJ and the judges and ad litem judges of the Tribunals was revised from US$ 160,000 to US$ 170,080 per annum, effective 1 January 2005. The Assembly also agreed with the recommendation of the Secretary-General to continue the floor/ceiling mechanism applied to effect the payment of the emoluments of the judges at the floor/ceiling exchange rates of the euro to the United States dollar which were kept at the 2003 levels, i.e., €1.0272 and €1.1128, respectively. As mentioned above, based on the revised annual salary of US$ 170,080, or US$ 14,173 per month, the floor exchange rate of €1.0272 to the United States dollar resulted in a currency floor of €14,559 per month and the ceiling exchange rate of €1.1128 to the United States dollar, resulted in a currency ceiling of €15,772 per month. As can be noted from table 2 above, members of ICJ and judges of ICTY and judges of ICTR serving in The Hague, received a monthly salary of €14,559 per month, or €174,706 per annum. For the year 2005, the euro salary expressed in United States dollars at the official United Nations exchange rate yielded an annual salary of US$ 217,851. If the value of the euro monthly salary in 2006 is projected to remain at the same level as at September to December 2006, the annual salary of the judges serving in The Hague for the year 2006 would be estimated at US$ 218,460. It is noted that at the September 2006 exchange rate of the euro to the United States dollar, the current annual floor rate salary of €174,708 is equivalent to US$ 223,985.

77. With regard to the level of salaries, ICJ has pointed out that although members of the Court are required by article 2 of the Statute of the Court to possess the qualifications required in their respective countries for appointment to the highest judicial offices, their remuneration is lower than that provided by the main national judiciaries. The Registry of the Court has recalled that the remuneration paid by the

other comparable international judicial organ based in The Hague, ICJ was higher as it is set at €180,000 annually.

78. As indicated above, according to the Netherlands Central Bureau of Statistics, the movement in the consumer price index for the Netherlands for the period from January 1999 to May 2004 increased by 17.4 per cent and for the period from June 2004 to June 2006 it increased by 2.3 per cent. As indicated in table 1 above, over the period from January 2002 to September 2006, the United States dollar lost, on average, 30 per cent against the euro. For 2005, the percentage difference between the judges' salary of US$ 170,080 paid at the floor rate in euros and the value of the judges' salary converted from euros back to United States dollars is 28.1 per cent.

79. In paragraph 8 of its resolution 59/282, the General Assembly requested the Secretary-General to submit a comprehensive report to the General Assembly at its sixty-first session, including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that limits the divergence of such remuneration from that of comparable positions of seniority within the United Nations system.

80. While the floor/ceiling mechanism provides for some protection against the weakening/strengthening of the United States dollar vis-à-vis the euro, especially when some flexibility is applied in maintaining certain rates of exchange to shield against devaluations, it does not allow for proper adjustment for the fluctuations of the United States dollar against the euro. The Member States may wish to introduce a mechanism similar to the one that pertains to salaries of staff in the Professional and higher categories, namely a net base salary with a corresponding post adjustment amount per index point equal to 1 per cent of net base salary at each level and step of the salary scale.

81. Taking into consideration the current level of remuneration of the judges, i.e., US$ 170,080, or a proposed base salary of US$ 170,080, the corresponding post adjustment amount per index point equal to 1 per cent of base salary would equal US$ 1,700.80. In September 2006, the current post adjustment multiplier for the Netherlands was 50.2 and for the United Republic of Tanzania it was 38.6. The application of the respective current post adjustment multipliers for the Netherlands and the United Republic of Tanzania would yield an annual remuneration (base salary plus post adjustment) of US$ 255,460 for judges serving in The Hague and US$ 235,731 for judges serving in Arusha, or a 14 per cent increase for judges serving in The Hague when taking into consideration the United States dollar value of their protected salaries and, a 38.6 per cent increase for ICTR judges serving in Arusha who have not benefited from the protection in payment of their salaries from the application of a floor/ceiling mechanism.

82. This approach would be administratively simple and respond to the General Assembly's request for the establishment of a mechanism of remuneration based on market exchange rates and local retail price fluctuations that would limit the divergence of such remuneration from that of comparable positions of seniority within the United Nations. However, in this regard, it is recalled that the base/floor salary scale against which staff in the Professional and higher categories are paid is revised from time to time whereby increases in the base scale are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers. Consolidations took place in March 2001, March 2002 and January 2005. In its report to the General

Assembly at its sixty-first session,[5] ICSC recommends an increase in the base/floor salary scale of 4.57 per cent, effective 1 January 2007. The increase in the base/floor scale would be implemented through the standard method of consolidating post adjustment multiplier points on a no-loss/no-gain basis. Under this approach, the application of the 4.57 per cent to the proposed base salary of US$ 170,080 for the judges would yield a revised proposed annual base salary of US$ 177,900 (rounded), effective 1 January 2007. It is thus suggested that the annual base salary of the members of the Court and the judges and ad litem judges of the Tribunals be increased by some 4.6 per cent and be set at US$ 177,900, as from 1 January 2007, with a corresponding post adjustment per index point amount of US$ 1,779.00 (i.e., 1 per cent of US$ 177,900), to which would be applied the post adjustment multiplier in effect for the Netherlands or for the United Republic of Tanzania. Based on applicable post adjustment multipliers as at September 2006 for each respective locality, and taking into account the resulting post consolidation post adjustment multiplier points into the base salary, such an approach would yield a total salary (base salary plus post adjustment) of approximately US$ 255,464 for judges serving in the Netherlands and US$ 225,716 for ICTR judges serving in the United Republic of Tanzania.

83. If the above proposal were to be endorsed, the Secretary-General would propose that on the occasion of future revisions to the base scale applicable to staff in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers, the annual base salary of the members of ICJ and the judges and ad litem judges of the Tribunals also be adjusted by the same percentage and at the same time. The Secretary-General would also propose to discontinue the application of the floor/ceiling mechanism to regulate emoluments against the weakening/strengthening of the United States dollar against the euro as the application of the post adjustment would reflect the effect of currency fluctuations.

84. In addition, should the General Assembly agree to introduce a post adjustment system, the definitions for salary should revert to the definitions in place when a cost-of-living supplement was paid, i.e., an annual base salary, exclusive of any allowances. That system was in place until 1991. In this respect, it should be recalled that prior to the introduction of the floor/ceiling mechanism, judges' emoluments were composed of an annual base salary plus a cost-of-living supplement. For the purpose of payments to judges ad hoc, annual salary was defined in paragraph 3 of General Assembly resolution 40/257 A as follows: judges ad hoc are to be compensated for each day they exercise their functions, one three-hundred-and-sixty-fifth of the sum of the annual base salary and interim cost-of-living supplement payable at the time to a member of the Court. Under this definition, if a post adjustment system were introduced, judges ad hoc would receive both the base salary and the post adjustment element of emolument.

B. Other conditions of service

Special allowance of the President and the Vice-President when acting as President

85. ICJ has pointed out that the conditions of service and compensation of the judges of the International Criminal Court also provide for special allowances for the President and Vice-Presidents. A special allowance is paid at the rate of 10 per cent of the President's annual remuneration; based on the current salary of €180,000, the annual allowance is €18,000 ($21,536 at the United Nations average rate of exchange for the first four months of 2006). A special allowance of €100 per day ($120) is paid, subject to a cap of €10,000 per year, to the First or Second Vice-President if acting as President.

86. ICJ has indicated that, given the past support of the Secretary-General, together with the continuing heavy caseload of the Court and the favourable financial position of the International Criminal Court, the recommendation for an increase in the allowances should again be presented for the General Assembly's consideration. ICJ proposes an increase in the President's allowance from US$ 15,000 to US$ 20,000 and for the Vice-President's allowance from US$ 94 per day to US$ 125 per day, subject to a maximum of US$ 12,500 per year. Accordingly, the Member States may wish to consider increasing the special allowance of the President and the Vice-President of the Court and the Tribunals.

Education costs

87. ICSC reviewed the education grant in 2006.[6] The Secretary-General recommends that any decision taken by the General Assembly at its sixty-first session to update the levels of the education grant or changes in the provisions regarding disabled children be extended to the members of the Court and the judges of the Tribunals.

88. The next review of the costs of educating children of the members of the Court and the judges of the Tribunals and will be conducted at the time of the next comprehensive review of the conditions of service.

Travel and subsistence regulations

89. The Registrar of ICJ has pointed out that article 2, paragraph 2, of the Travel and Subsistence Regulations for the members of ICJ, approved by the General Assembly in its resolution 37/240, states that the daily subsistence allowance shall be paid at rates equivalent to the standard subsistence allowance applied to officials of the United Nations Secretariat, plus 40 per cent. As to the assignment grant, article 3, paragraph 1 (a) (ii), entitles resident judges to an amount corresponding to the assignment grant provisions applicable to the senior officials of the Secretariat of the United Nations.

90. The Registrar has also pointed out that the General Assembly, in its resolution 58/270, discontinued the practice of paying higher subsistence allowance rates to middle and senior-level United Nations staff members. However, administrative instruction ST/AI/2003/9 on the implementation of the resolution stated that United Nations offices other than staff members at a rank equivalent to Assistant Secretary-

General or above should be paid daily subsistence at the rate promulgated by ICSC, plus 40 per cent.

91. In view of the potential conflict resulting from General Assembly resolution 37/240, which treats members of the Court as senior United Nations staff members, and resolution 58/270 as implemented by administrative instruction ST/AI/2003/9, which discontinued the payment of higher subsistence rates to senior United Nations staff members, while maintaining those higher subsistence rates for officials other than staff members who are at a rank equivalent to Assistant Secretary-General or above, the Registrar of the ICJ has proposed that the Travel and Subsistence Regulations for assignment grants should be revised to conform with the daily subsistence allowance applicable, under article 2, paragraph 2, for the members of the Court. In the opinion of ICJ, the daily subsistence rate for purposes of the assignment grant should necessarily correspond to the daily approved rate in the Travel and Subsistence Regulations for members of the Court (that is, the standard rate plus 40 per cent). As this is the current practice, the Travel and Subsistence Regulations should remove the reference to the amount of the assignment grant being that which is applicable to senior officials of the Secretariat. The emoluments and conditions of service of members of the Court are sui generis; judges are not senior official of the Secretariat but elected members of a principle organ of the United Nations (Articles 7 and 92 of the Charter of the United Nations).

92. The Secretary-General notes that, since January 2004, senior United Nations staff members have been paid an assignment grant based on the standard rates promulgated by ICSC. The Secretary-General finds that the respective travel and subsistence regulations of ICJ and the Tribunals should be updated to reflect current practice.

Retirement benefits

International Court of Justice

93. In paragraph 8 of its resolution 59/282, the General Assembly requested the Secretary-General, to submit a comprehensive report to the General Assembly at its sixty-first session, including, inter alia, proposals on the protection of pensions in payment to former judges and their survivors as well as on the difference between the pension benefits of the judges of the Tribunals on the one hand and the members of the Court on the other.

94. Based on the decision of the General Assembly contained in section VIII of resolution 53/214 to set the retirement pension for the members of ICJ at half the annual salary, and should the General Assembly approve a revised annual base salary of US$ 177,900 per annum, the annual retirement benefit of a member of ICJ retiring in 2007 would increase by some 4.6 per cent, from US$ 85,040 per annum to US$ 88,950 with effect from 1 January 2007. A definition of annual salary appears in article 5, paragraph 2, of the Pension Scheme Regulations of ICJ as approved by the General Assembly in section VIII of its resolution 38/239. For purposes of the pension scheme, annual salary is defined as annual base, exclusive of allowances.

Tribunals

95. Should the General Assembly approve a revised annual base salary of US$ 177,900 per annum, the annual retirement benefit of the judges of the Tribunals retiring in 2007 would increase by 4.6 per cent, from US$ 37,796 per annum to US$ 39,533, with effect from 1 January 2007. However, as mentioned above, the President and the Registrar of ICTY as well as the President of and the Registrar of ICTR have written to the Secretary-General concerning the disparity between the retirement benefits of the judges with those of ICJ. They have made proposals as indicated in the letters in annexes IV and V, respectively, to the present report and indicated that by failing to give effect to the statutory principle of same pension for same years of service — equality in years of service produces equality in pension — the Pension Scheme has misinterpreted and misapplied the provision of article 13 bis, paragraph 3, of the respective Statutes. Accordingly, the President and the Registrar of ICTY as well as the President and the Registrar of ICTR are proposing that annex II to General Assembly resolution 58/264 be amended, respectively, as follows:

(a) Delete article 1, paragraph 2, of annex II;

(b) Replace paragraph 2 with the following:

A judge of ICTY or ICTR shall receive the pension payable to a judge of ICJ whose years of service are the same as the years of actual service of the ICTY or ICTR judge.

Where an ICTY or ICTR judge is re-elected, his years of actual service are determined by adding the period served after re-election to the period served prior to re-election.

Where an ICTY or ICTR judge is elected or re-elected following an appointment, his years of actual service are determined by adding the period served after election or re-election to the period served prior to his election or re-election.

96. With regard to the points raised by the two Tribunals concerning pension benefits of the judges of the Tribunals, the Secretary-General notes that the General Assembly approved a pension scheme for the judges of the Tribunals based on the recommendations contained in paragraph 29 of the report of the Advisory Committee on Administrative and Budgetary Questions (A/53/7/Add.6), whereby the Advisory Committee recommended the pension benefit for the judges of the two Tribunals be based on that applicable to the judges of ICJ, prorated to account for the difference in length in the terms of appointment, that is to say, nine years for the members of ICJ versus four years for the judges of both Tribunals. As was the case in 2001, the Secretary-General shares the concerns expressed by the two Tribunals that the existing disparity between the pension benefits of the judges of the Tribunals and of the judges of the Court results in a discrimination against the judges of the Tribunal not warranted by the ICTY or the ICTR Statute, and that as the General Assembly is the sole authority to determine the conditions of service and the pension benefits of the judges of the Tribunals and of the judges of the Court, it be brought once again to the attention of the General Assembly for its consideration, in the light of the arguments and proposals put forward by the President and the Registrar of ICTY and the President and Registrar of ICTR.

Pensions in payment

97. Based on the proposed increase in the annual base salary of the members of ICJ and the judges of the Tribunals, it is recommended that pensions in payment be increased by 4.6 per cent, effective 1 January 2007. In response to the concern exercised by ICJ on the occasion of the last review, of the effect of the devaluation of the United States dollar vis-à-vis the euro on the level of pension payments to former members, and in the interest of taking steps to remedy this disparity in payments, it is recalled that it was the view of the Secretary-General that consideration should be given to applying the floor/ceiling mechanism to pensions in payment to former judges and their survivors who reside in the euro zone countries to protect the level of pensions from further erosion.

98. In 2004, the Advisory Committee indicated that "the Committee is of the opinion that the approach proposed is too narrow, taking into account that the Registrar of the Court, in the letter addressed to the Secretariat in April 2004, indicates the drastic deterioration in value that often results 'both in Europe and other non-United States dollar zones'", and recommended "further elaboration of this proposal, including consideration of other options that could protect the pensions in payment to former judges and their survivors. Moreover, the Committee is of the opinion that the Secretariat should avail itself of the experience of ICSC in applying floor/ceiling arrangements to salaries. The results of such a review should be presented to the General Assembly at its resumed fifty-ninth session" (A/59/557, paras. 10 and 11). A note was prepared in response to the request of the Advisory Committee, but was not presented at that time. Below follows the review that had been requested.

99. Information on its experience in applying floor/ceiling arrangements was requested from ICSC. In further elaborating the recommendation of the Secretary-General to protect the level of pensions to former judges and their survivors residing in both Europe and other non-United States dollar zones, it was deemed useful to provide information on the pension adjustment system which the United Nations Joint Staff Pension Fund (UNJSPF) is using to pay pension benefits. A summary of the information obtained is provided below.

International Civil Service Commission

100. ICSC uses floor/ceiling mechanisms in the administration of the post adjustment system, which is a highly technical system using a specialized methodology.

101. Post adjustment is an amount paid in addition to net base salary, which is designed to ensure that no matter where United Nations common system staff work, their net remuneration has a purchasing power equivalent to that at the base of the system, New York. It is applicable to the United Nations common system international staff in the Professional and higher categories.

102. Together, the net base salary and the post adjustment add up to the net remuneration. If the cost-of-living index at a given location is equal to or is lower than the base index of 100, the post adjustment is set at zero; in other words, net remuneration in such cases is the same as net base salary. There is no negative post adjustment.

103. Post adjustment is computed on the basis of four elements, as follows:

(a) Differences in prices between the location where the staff member works and New York;

(b) Local inflation;

(c) Exchange rate of local currency relative to the United States dollar;

(d) Average expenditure pattern of staff members at a given location.

Post adjustment indices

104. The post adjustment index for a given location is a measure of the cost of living of staff at that location relative to the base city, New York. The post adjustment multiplier (also known as the post adjustment classification) is derived from the post adjustment index. The post adjustment index is established by means of periodic comparisons of cost-of-living data between the base city and other locations. The data are collected through surveys called place-to-place surveys. In between place-to-place surveys, the post adjustment index is updated through time-to-time adjustments reflecting movements in local prices as well as changes in the local currency exchange rates relative to the United States dollar. Also, housing surveys are carried out each year at many duty stations to enable the housing component of the comparison to be adjusted at least once a year. The main component of the post adjustment index are:

(a) The in-area component (excluding rental/housing) relates to living costs (services and commodities) incurred in the country of the duty station;

(b) The rental/housing component relates to rent and housing-related costs;

(c) The medical insurance component relates to the amount of insurance premiums paid by staff;

(d) The pension contribution component relates to the amount of pension contributions paid by staff;

(e) The out-of-area component relates to expenditures, which, although incurred while the staff member is at the duty station, are disbursed outside the country, often in another currency.

Floor/ceiling measures

105. The United Nations was established at a time of low inflation and stable exchange rates. It was therefore possible to apply a relatively simple system of salary adjustment at the then-limited number of duty stations outside New York. Base salary scales remained largely unchanged and cost-of-living adjustments were made from time to time.

106. The expansion of United Nations activities in the mid-1950s, the need arose for a more accurate and responsive system that could at the same time be easily and efficiently administered. This led to the creation of the present post adjustment system in 1957, when Geneva was selected as the base of the system. In the late 1960s, the system came under further pressures from higher rates of inflation and more frequent currency movements. In the mid-1970s, ICSC came into being and following an in-depth review of the United Nations salary system, further refinements were introduced and New York was made the base of the system.

107. In the late 1970s monetary instability and soaring inflation rates prompted ICSC to review the statistical methodology used to calculate post adjustment indices. Over time, the system has grown in complexity. By the late 1980s the system was once again in need of adjustment and ICSC, at the request of the General Assembly, undertook a comprehensive review of the conditions of service of staff in the Professional and higher categories.

108. Between 1986 and 1989, ICSC implemented a number of measures to offset the effects of local currency appreciation vis-à-vis the United States dollar. In regard to the separation of the effects of inflation and currency fluctuations in the post adjustment system, ICSC noted that, owing to the regressivity built into the post adjustment system, exchange rate fluctuations directly affected take-home pay. The need to stabilize take-home pay in local currency at hard currency duty stations was widely recognized. Thus, in 1987, ICSC decided to establish a remuneration correction factor and decided on procedures for application in countries where the remuneration correction factor was applicable and the United States dollar had devalued in relation to the local currency by 20 per cent or more since the last place-to-place survey.

109. In 1989, ICSC noted that the remuneration correction factor added to the complexity of administering the post adjustment system. The removal of regressivity, combined with a revised treatment of the out-of-area component, would go a long way towards eliminating variations in the level of local currency emoluments resulting from exchange rate fluctuations, and would constitute a further simplification of the system. ICSC recommended to the General Assembly that: (a) all regressivity should be removed from the post adjustment system; (b) pensions contributions should be treated as a separate item in the post adjustment index so as to ensure that there would be no shift from staff to organizations in the share of expenditures relating to pension contributions. It decided that the remuneration correction factor and floor protection measures should be discontinued, subject to, and in conjunction with, the removal of regressivity and the modification in the treatment of out-of-area expenditures.

110. ICSC noted that the institution of an appropriate salary floor would eliminate the need for special measures for low and negative post adjustment duty stations. As for measures associated with high inflation and abrupt or continuous devaluation, it was recognized that the incidence of application would be greatly reduced by the introduction of a revised salary floor, the revision in the treatment of out-of-area expenditures, the use of mini-surveys and changes in the frequency of time-to-time adjustments. These special measures could therefore appropriately be eliminated, as long as the facility to apply ad hoc measures was retained by ICSC for use in extreme circumstances.

111. ICSC decided that post adjustment system should be simplified by the elimination of special measures for: high inflation; abrupt devaluation; continuous devaluation; and duty station with a low or negative post adjustment classification. That decision was made subject to the understanding that the recommendation and decisions on establishment of a floor, treatment of out-of-area expenditures and the frequency of time-to-time adjustments were approved and implemented concurrently.

112. By its resolution 44/198, the General Assembly endorsed the above ICSC recommendations and noted its decisions. Accordingly, the General Assembly

approved, with effect from 1 July 1990, the establishment of a floor net salary level for staff in the Professional and higher categories, by reference to the corresponding base net salary levels of officials in comparable positions serving at the base city of the comparator civil service.

Classification of duty stations

113. Duty stations where United Nations common system staff serve are classified by ICSC into two groups, known respectively as group I and group II duty stations. Group I refers to duty stations having "hard currency". Group II duty stations are known as "soft currency" duty stations. The review of the post adjustment classifications is different for the two groups. Group I duty stations are reviewed monthly and group II duty stations are reviewed three times a year.

114. In group I duty stations (hard currency), changes in post adjustment in respect of cost-of-living are made either after a full 5 per cent movement of the post adjustment index has been measured or after 12 months since the last increase in net take-home pay in local currency, whichever comes first. Changes in post adjustment due solely to currency fluctuations are implemented monthly and in accordance with the zero point five (0.5) per cent rule.

115. The 0.5 per cent rule, designed to stabilize salaries in local currency terms between cost-of-living adjustments, limits the changes in local currency pay due to exchange rate fluctuations to plus or minus 0.5 per cent of net take-home pay. Whenever cost-of-living adjustments are made, net take-home pay is calculated on the basis of the new post adjustment index. Floor and ceiling levels of net take-home pay are computed at 0.5 per cent below and 0.5 per cent above the new level of the take-home pay. The actual net take-home pay in local currency has to stay within this range regardless of the movement of the post adjustment index. The rule permits, and indeed under some circumstances necessitates, divergences between the post adjustment index and the post adjustment multiplier, which are, however, eliminated at subsequent cost-of-living adjustments. This rule is applied until a full 5 per cent movement of post adjustment index has been measured or after 12 months since the last increase in net take-home pay in local currency, whichever comes first.

116. In summary, the floor/ceiling measures of the post adjustment system are designed to stabilize take-home pay in local currency (net base salary plus post adjustment minus pension contribution) for a limited period of time (generally 12 months between post adjustment classification reviews).

United Nations Joint Staff Pension Fund

117. The UNJSPF Regulations and Rules govern the conditions of participation and the determination of entitlements. The purpose of the pension adjustment system is to protect the purchasing power of a periodic benefit at the time it is awarded to a participant from subsequent erosion by inflation and, where applicable, by currency fluctuations vis-à-vis the United States dollar.

118. The pension adjustment system is not part of the Regulations. It was adopted, and then modified from time to time, by the General Assembly, following consideration and recommendations by the United Nations Joint Staff Pension Board.

119. The benefits payable by the Pension Fund under its Regulations are established and denominated in United States dollars. However, many beneficiaries live outside the United States and many current participants in the Pension Fund intend to retire in countries other than the United States. The purchasing power of their benefits converted into the currency of their country of retirement is therefore of vital importance to them. Because of the rapid and substantial currency fluctuations that have occurred since 1971, measures have been taken over the years as part of the UNJSPF pension system to cope with their effects and to protect, to some extent, the purchasing power of benefits in all countries and currencies by (a) reducing the impact of month-to-month currency fluctuations; (b) making an upward adjustment in the initial local-currency amount of the periodic benefit of beneficiaries who reside in high-cost countries; and (c) adjusting the local-currency pensions by local inflation.

120. The operation of the pension adjustment system, therefore, involves the keeping, for each beneficiary, a record of one or two amounts of the periodic benefit as follows:

(a) For all beneficiaries, an amount in United States dollars, which is adjusted periodically according to cost-of-living changes as measured by the United States consumer price index;

(b) For those beneficiaries who exercise the option to provide proof of residence in a country other than the United States, a second amount in local currency, which is adjusted periodically according to changes in the cost of living in that country as measured by the country's consumer price index.

Operation of the two-track system

121. The above system is referred to as the two-track pension adjustment system. The beneficiary is entitled to the payment of the higher of the two amounts, subject to specific conditions and limitations. In order to qualify for the two-track adjustment system, a beneficiary must provide proof of residence in a country other than the United States in the form of a certificate issued by a national or local governmental authority. Once proof of country of residence has been submitted, the beneficiary will remain permanently on the two-track system.

122. A pension benefit is calculated initially in United States dollars. If a beneficiary has elected to provide proof of residence in a country other than the United States, UNJSPF would establish the beneficiary's local-currency track pension.

123. The "local-currency track" pension is calculated by converting the value of the beneficiary's "United States dollar track" pension on the first day of the beneficiary's retirement, at an average exchange rate between the United States dollar and the currency of the country of the beneficiary's residence (this average is computed over the 36 consecutive calendar months up to and including the month of separation). In converting the United States dollar amount of the periodic benefit at the time of separation (the so-called dollar base amount) into local currency UNJSPF does not use either the spot exchange rate (which ranges from day-to-day), or any specific United Nations operational rate of exchange (which is set monthly). To prevent undue fluctuations, UNJSPF uses the average of the United Nations operational rates of exchange for the 36 consecutive calendar months up to and

including the month when separation takes place. A cost-of-living differential factor is added for high-cost countries, i.e., countries where over the 36 months up to and including the month of separation the post adjustment was significantly higher than for New York. The ultimate result is called the local-currency base amount.

124. This local track amount is the beneficiary's protection against future fluctuations of the exchange rate, as the beneficiary will never receive less (in local currency). Every quarter, the local currency equivalent of the dollar amount (the beneficiary's dollar track) is compared with the local track amount and the beneficiary is generally entitled to the higher of the two. Should the dollar track amount be higher, it would be subject to a maximum cap amount determined by the beneficiary's separation date (120 per cent of the local track amount for separation before 1 July 1995, 110 per cent on or after that date). As from 1 April 2005, there is now also a minimum guaranteed floor, set at 80 per cent of the adjusted dollar-track amount. In other words, the beneficiary's monthly payment will fluctuate between the local track amount and the cap depending on the United States dollar/local currency exchange rate.

125. A beneficiary's pension benefit will evolve over time based on inflation and will be adjusted generally on an annual basis, provided that the consumer price index has moved by at least 2 per cent since the last adjustment. The dollar track pension is adjusted by the movement of the United States consumer price index, while the local track pension is adjusted by the movement of the consumer price index of the country of residence.

126. In considering the possibility of establishing a mechanism which would be aimed at providing some protection in the value of pensions of judges, the Secretary-General recalls that pension benefits approved by the General Assembly for the members of ICJ, and the judges of the two Tribunals are denominated in United States dollars.

127. As indicated above, the Secretary-General is of the view that consideration should be given to applying a floor/ceiling mechanism to pensions in payment to former judges and their survivors residing in the euro zone countries to protect the level of their pensions.

128. In reviewing the mechanisms elaborated above, both in ICSC and in UNJSPF, which have been designed to offset the impact of the devaluation of the United States dollar against other currencies, there is no doubt that these are very complex and require extensive administrative support. Of course, it is recognized that the number of United Nations common system staff being served by both ICSC and UNJSPF is considerable.

129. Considering the relatively small number of persons concerned who are receiving a pension or a survivor's benefit (currently 17 judges and 12 widows in ICJ, 13 judges and 1 widow in ICTY and 6 judges and 1 widow in ICTR), it would seem reasonable to propose a currency protection mechanism that would be relatively simple and easy to administer. Therefore, upon further reflection, the Secretary-General has concluded that his original proposal for the establishment of a floor/ceiling mechanism for the payment of pension benefits to judges and their survivors should be modified.

130. Noting that pension benefits are denominated in United States dollars, the Secretary-General thought of proposing that members of ICJ and judges of the two

Tribunals and survivors in receipt of a pension benefit who are residing in a non-United States dollar country or zone and who so wish, be given the option of having their pension benefit converted from United States dollars to a local currency using the 36-month average exchange rate established by UNJSPF applicable to the country or zone concerned. A judge in receipt of a pension or a survivor in receipt of a pension benefit would be given the opportunity to request, on an annual basis, at six-month intervals (December and June) that the monthly pension benefit in United States dollars be converted into the requested currency using the latest available United Nations 36-month average exchange rate published for the payment month concerned. This would help offset the impact of undue exchange rate fluctuations of the United States dollar vis-à-vis certain currencies.

131. In this respect, ICJ has remarked that while the option of conversion of pensions using the United Nations 36-month average exchange rate will definitely offset the impact of undue exchange rate fluctuations of the United States dollar, currently this conversion offers minimal protection against the continued weakness of the United States dollar. However, application of the 36-month average exchange rate will result in stabilizing the operational rate of exchange and is a definite improvement over the present system, in particular as it gives a judge or survivor the opportunity to request, on an annual basis or at six-month intervals (December and June), that the monthly pension benefit set in United States dollars be either paid in that currency or be converted into the requested local currency using the 36-month average exchange rate in effect for the payment month concerned.

132. Accordingly, the Secretary-General would request Member States to consider the above option to arrive at a simple manner in which to provide protection to pensions in payment.

Ad hoc judges

133. The Secretary-General proposes that no change be effected in the arrangements for ad hoc judges on the occasion of this periodic review.

Ad litem judges

134. The Secretary-General proposes that no change be effected in the conditions of service for ad litem judges on the occasion of this periodic review.

V. Financial implications

135. Should the General Assembly approve the proposals contained in paragraphs 82, 86, 87, 93-95, 97, 131 and 132 above relating to an increase in the annual salary, an increase in the president's allowance, increases in the costs of educating children and additional pension payments in respect of former judges and the widows of the judges of ICJ and the judges of the two Tribunals, the programme budget implications are estimated at US$ 2,186,500 for the biennium 2006-2007 as reflected in table 3 below. The total estimated requirements of US$ 2,186,500 for the biennium 2006-2007 arising from these three elements are seen as relating to inflationary adjustments. Therefore, in accordance with the procedures detailed in section III, paragraph 34, of General Assembly resolution 52/220, these additional requirements, would be reported in the context of the relevant performance reports for the biennium 2006-2007.

Table 3

Programme budget implications of the proposals contained in paragraphs 82, 86, 87, 93-95, 97, 131 and 132 of the report on the conditions of service and compensation for officials other than Secretariat officials for the biennium 2006-2007

	Additional requirements that would result from the adoption of the recommendations
Members of the International Court of Justice	
Salary (increase)	472 200
Special allowance	8 100
Pensions	71 800
Education grant[a]	—
Total	**552 100**
Judges of the International Tribunal for the Former Yugoslavia	
Salary (increase)	818 500
Special allowance	8 100
Pensions	24 200
Education grant[b]	—
Total	**850 800**
Judges of the International Criminal Tribunal for Rwanda	
Salary (increase)	761 600
Special allowance	8 100
Pensions	13 900
Education grant[b]	—
Total	**783 600**

[a] Based on the current composition of the Court, the recommendations contained in the report have no implications for the budget for 2006-2007.

[b] Based on the current composition of the Tribunal, the recommendations contained in the report have no implications for the budget for 2006-2007.

VI. Next comprehensive review

136. In its resolution 56/285, the General Assembly decided that the conditions of service and remuneration for the members of ICJ, the judges of the two Tribunals and the ad litem judges of ICTY would next be reviewed at its fifty-ninth session. In paragraph 9 of its resolution 59/282, the General Assembly decided that the conditions of service and remuneration for the members of ICJ, and the judges of the two Tribunals and the ad litem judges of ICTY would next be reviewed at its sixty-first session. Should the General Assembly decide to revert the three-year review cycle, the next comprehensive review by the Assembly would be undertaken at its sixty-fourth session, in 2009.

Notes

[1] See A/C.5/48/66, paras. 16-21, on the special allowances of the President and of the Vice-President when acting as President; paras. 22 and 23 on the compensation of ad hoc judges; and paras. 24-31 on the costs of educating children.

[2] The background of the special allowance was restated in the Secretary-General's report on the conditions of service submitted to the General Assembly at its fifty-ninth session (A/C.5/59/2), but no specific recommendation was made.

[3] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 30* (A/59/30), vol. I.

[4] See A/C.5/48/66, paras. 32-41; A/C.5/49/8, paras. 6-16; A/C.5/50/18, paras. 25-28; and A/C.5/53/11, paras. 33-42.

[5] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 30* (A/61/30), para. 94.

[6] Ibid., para. 62.

Annex I

Changes in net remuneration of Members of the Court, Secretariat officials and Members of United Nations bodies, from January 2000 to January 2006

(In United States dollars, dependency rate)

	2000	2001	2002	2003	2004	2005	2006
International Court of Justice							
President[a]	175 000	175 000	175 000	175 000	175 000	185 080	185 080
Index	100.0	100.0	100.0	100.0	100.0	105.76	105.76
Members of the Court	160 000	160 000	160 000	160 000	160 000	170 800	170 080
Index	100.0	100.0	100.0	100.0	100.0	106.3	106.3
Senior Secretariat officials							
The Hague							
Under-Secretary-General[b]	124 989	121 334	120 606	159 378	188 520	202 737	182 902
Index	100.0	97.1	96.5	127.5	150.8	162.2	146.2
Assistant Secretary-General[c]	113 970	110 617	109 950	145 511	172 239	185 280	167 087
Index	100.0	97.1	96.5	127.7	151.1	162.5	146.6
Geneva							
Under-Secretary-General[b]	148 957	145 905	148 023	185 631	204 346	228 331	207 472
Index	100.0	98.0	99.4	124.6	137.2	153.3	139.3
Assistant Secretary-General[c]	135 953	133 153	135 096	169 589	186 755	208 755	189 623
Index	100.0	98.0	99.4	124.7	137.4	153.5	139.5
New York							
Under-Secretary-General[b]	159 004	164 631	170 548	187 766	197 312	205 809	213 487
Index	100.0	103.5	107.3	118.1	124.1	129.4	134.3
Assistant Secretary-General[c]	145 169	150 329	155 755	171 548	180 304	188 097	195 140
Index	100.0	103.6	107.3	118.2	124.2	129.6	134.4
Full-time members of subsidiary bodies							
Chairman, International Civil Service Commission/Advisory Committee on Administrative and Budgetary Questions[d]	143 692	159 691	162 685	167 266	182 189	189 077	196 240
Index	100.0	111.1	113.2	116.4	126.8	131.6	136.6
Vice-Chairman, International Civil Service Commission	135 692	149 691	152 685	157 266	172 189	179 077	186 240
Index	100.0	110.3	112.5	115.9	126.9	131.9	137.3
Members of the Joint Inspection Unit, Geneva	117 771	115 291	117 611	148 171	163 378	182 266	165 319
Index	92.2	90.3	99.9	125.8	138.7	154.7	140.4

[a] Includes a special allowance of $15,000.
[b] Includes a representation allowance of $4,000 a year.
[c] Includes a representation allowance of $3,000 a year.
[d] Includes a special allowance of $10,000 a year.

Annex II

Movement in gross emoluments of officers of national judiciaries, the Court of the European Communities, the European Court of Human Rights, the Iran-United States Claims Tribunal and the International Criminal Court, 2000-2006

	2000	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*
United States Supreme Court							
Chief Justice							
United States dollars	181 400	186 300	192 600	198 600	201 600	208 100	212 100
Index	100.0	102.7	106.2	109.5	111.4	114.7	116.9
Associate Justice							
United States dollars	173 600	178 300	184 400	190 100	193 000	199 200	203 000
Index	100.0	102.7	106.2	109.5	111.8	114.7	116.9
Supreme Court of Canada							
Chief Justice							
Canadian dollars[a,b,c]	254 500	254 500	270 100	270 100	278 400	278 400	288 200
United States dollars	174 315	168 543	169 874	172 038	212 519	228 197	246 325
Index	100.0	96.7	97.5	98.7	121.9	130.9	141.3
Puisne Judge							
Canadian dollars[b,c,d]	235 700	235 700	250 200	250 200	257 800	257 800	266 800
United States dollars	161 438	156 093	157 358	159 363	196 794	211 311	228 034
Index	100.0	96.7	97.5	98.7	121.9	130.9	141.3
United Kingdom of Great Britain and Northern Ireland							
Lord Chief Justice							
Pounds sterling[c]	165 260	171 375	177 545	200 236	205 242	211 399	213 513
United States dollars	266 548	252 022	253 636	320 891	364 551	404 979	367 492
Index	100.0	94.6	95.2	120.4	136.8	151.9	137.9
Master of the Rolls							
Pounds sterling	157 390	163 213	169 089	181 176	185 705	191 276	193 189
United States dollars	253 855	240 019	241 556	297 010	329 849	366 429	332 511
Index	100.0	94.6	95.2	117.0	129.9	144.3	131.0
Australia							
Chief Justice							
Australian dollars[e]	276 800	287 900	308 100	336 450	336 450	367 060	382 110
United States dollars	180 915	159 944	157 194	189 017	251 082	284 322	278 912
Index	100.0	88.4	86.9	104.5	138.8	157.2	154.2

	2000	2001	2002	2003	2004	2005	20
Justice							
Australian dollars[e]	251 200	261 300	279 600	305 330	305 330	333 100	346 76
United States dollars	164 183	145 167	142 653	171 534	227 858	258 017	253 10
Index	100.0	88.4	86.9	104.5	138.8	157.2	154
Japan							
Chief Justice							
Yen[c]	44 187 032	44 187 032	44 003 403	42 887 845	41 645 344	41 645 344	39 224 94
United States dollars	433 206	384 235	335 904	360 402	389 209	389 209	368 58
Index	100.0	88.7	77.5	83.2	89.8	89.8	85
Associate Judge							
Yen	32 258 067	32 258 067	32 124 012	31 305 273	30 406 524	30 406 524	28 637 43
United States dollars[c]	316 256	280 505	245 221	263 070	276 423	276 423	267 64
Index	100.0	88.7	77.5	83.2	89.9	89.9	84
Court of the European Communities							
President							
Euros	235 904	241 329	250 258	255 264	266 530		
United States dollars	237 089	224 555	220 298	266 455	332 747		
Index	100.0	94.7	92.9	112.4	140.3		
Member							
Euros	192 313	196 352	204 015	208 095	217 280		
United States dollars	193 279	183 061	179 591	217 218	271 261		
Index	100.0	94.7	92.9	112.4	140.3		
European Court of Human Rights							
President							
Euros	167 699[f]	172 730[f]	172 7.0[f]	177 912[f]	190 004[f]	198 349[f]	198 34
United States dollars	168 542	160 724	152 0	185 712	237 208	269 130	234 7
Index	100.0	95.4	90..	110.2	140.7	159.7	139
Member							
Euros	167 699	172 730	172 730	177 912	177 912	198 349	198 3
United States dollars	168 542	160 742	152 051	185 712	237 208	269 130	234 7
Index	100.0	95.4	90.2	110.2	140.7	159.7	139
International Criminal Court							
President							
Euros[g]				198 000	198 000	198 000	198 0
United States dollars				206 680	247 191	268 657	234 3
Index				100.0	119.6	130.0	113

	2000	2001	2002	2003	2004	2005	2006
Member of the Court							
Euros				180 000	180 000	180 000	180 000
United States dollars				187 891	224 719	244 233	213 017
Index				100.0	119.6	129.9	113.7

[a] Also entitled to a representation allowance of $Can 10,000.
[b] Also entitled to an incidental allowance of $Can 2,500.
[c] Salary effective as from 1 April.
[d] Also entitled to a representation allowance of $Can 5,000.
[e] Also entitled to an annual allowance of $A 20,000. Allowance increased to $A 25,000 as of 1 July 2005.
[f] Also entitled to an annual allowance of €11,740 and of €12,092 as of 1 April 2005.
[g] Also entitled to a representation allowance of €18,000.

Annex III

Salaries for senior officials in The Hague

	Under-Secretary-General[a]		*Judge of the International Court of Justice*		*Judge of the International Criminal Court*	
	Euros	*United States dollars*	*Euros*	*United States dollars*	*Euros*	*United States dollars*
January 2004	12 584	15 710	13 696	17 099	15 000	18 727
February 2004	12 589	15 658	13 696	17 035	15 000	18 657
March 2004	12 589	15 658	13 696	17 035	15 000	18 657
April 2004	12 616	15 385	13 696	16 702	15 000	18 293
May 2004	12 658	14 998	13 696	16 227	15 000	17 773
June 2004	12 614	15 459	13 696	16 784	15 000	18 382
July 2004	12 623	15 375	13 696	16 682	15 000	18 270
August 2004	12 627	15 208	13 696	16 481	15 000	18 051
September 2004	12 627	15 208	13 696	16 481	15 000	18 051
October 2004	12 595	15 511	13 696	16 867	15 000	18 473
November 2004	12 545	15 961	13 696	17 425	15 000	19 084
December 2004	12 485	16 558	13 696	18 164	15 000	19 894
	151 173	**186 688**	**164 352**	**202 984**	**180 000**	**222 310**
January 2005	12 451	16 896	14 559	19 754	15 000	20 353
February 2005	12 508	16 351	14 559	19 031	15 000	19 608
March 2005	12 491	16 500	14 559	19 232	15 000	19 815
April 2005	12 516	16 234	14 559	18 883	15 000	19 455
May 2005	12 524	16 202	14 559	18 834	15 000	19 405
June 2005	12 854	15 487	14 559	17 541	15 000	18 072
July 2005	12 856	15 508	14 559	17 562	15 000	18 094
August 2005	12 852	15 540	14 559	17 604	15 000	18 138
September 2005	12 831	15 647	14 559	17 755	15 000	18 293
October 2005	12 859	15 455	14 559	17 499	15 000	18 029
November 2005	13 296	15 551	14 559	17 028	15 000	17 544
December 2005	12 892	15 167	14 559	17 128	15 000	17 647
	152 931	**190 538**	**174 706**	**217 851**	**180 000**	**224 453**
January 2006	12 879	15 242	14 559	17 229	15 000	17 751
February 2006	12 852	15 540	14 559	17 604	15 000	18 138
March 2006	12 882	15 263	14 559	17 250	15 000	17 773
April 2006	12 852	15 540	14 559	17 604	15 000	18 138
May 2006	12 802	15 903	14 559	18 086	15 000	18 634
June 2006	12 754	16 394	14 559	18 713	15 000	19 280
July 2006	12 786	16 063	14 559	18 290	15 000	18 844

[a] Includes representation allowance of US$ 4,000 per year.

Annex IV

Letter dated 13 July 2006 from the Registrar and the President of the International Criminal Tribunal for the Former Yugoslavia to the Secretary-General

We draw your attention to a matter of great concern to the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the disparity between the pension entitlements of ICTY judges and judges of the International Court of Justice (ICJ), which is due to be discussed by the General Assembly at its sixty-first plenary session commencing in September 2006.

As you are aware, judges are elected to ICTY pursuant to Security Council resolution 827 (1993) of 25 May 1993. Article 13 bis (3) of the Tribunal's Statute, adopted pursuant to that resolution, provides:

> The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of judges of the International Court of Justice. They shall be eligible for re-election.

This provision must be interpreted and applied so as to give effect to its purpose, which is to achieve equivalence between the conditions of service for ICTY and ICJ judges. The equivalence must be substantial, not merely formal, and relates not only to salary but also to pension.

There is equivalence in the salary of ICTY and ICJ judges. But the pension scheme for ICTY judges does not reflect substantial equivalence with the pension for ICJ judges.

Properly interpreted, the substantial equivalence in pension called for by the Statute means that an ICTY judge should receive the same pension paid to an ICJ judge for the same years of service, i.e., equality in years of service should produce equality in pension; a pension scheme that does not achieve that result does not fulfil the statutory requirement that the terms and conditions of service of an ICTY judge are those of an ICJ judge, and has in fact misinterpreted the Statute. Thus an ICTY judge who has served three years, or four years or six or eight years should receive the same pension as an ICJ judge who has served the same number of years. It is irrelevant for this purpose that the ICJ term is nine years, while the ICTY term is four years. Neither an ICJ judge nor an ICTY judge is paid on the basis of his term of office. Salary is paid on an annual basis. Pension should not be determined by the term of office. An ICTY judge who has been re-elected should receive the same pension as an ICJ judge with the same years of service. After all, article 13 bis (3) itself provides for re-election.

Regrettably, substantial equivalence in pensions for the ICTY and ICJ judge is not achieved in respect of an ICTY judge serving more than four years. The relevant document is annex I to General Assembly resolution 58/264 of 23 December 2003 for ICJ and annex II for ICTY.

The disparity in pensions after four years service is graphically illustrated in the six cases below of an ICTY judge and an ICJ judge who come into office at the same time on 18 November 1997 and demit office at the same time.

I

The ICJ judge demits office after three years of service on 17 November 2000 and earns a pension of approximately $28,000.00 by virtue of article 1 (4) of annex I. The ICTY judge demits office at the same time in 2000, and earns the same pension of approximately $28,000.00 by virtue of article 1 (2) (f) of annex II. There is no disparity. This is as it should be, because both judges have the same years of service and earned the same monthly, yearly and aggregate salary over that period. The ICTY judge's pension, being the same as that of the ICJ judge, for the same years of service, fully implements the Statute which requires that his conditions of service be the same as those of the ICJ judge. However, the underlined words below indicate the significance attached by the Pension Scheme to the length of the term of office in computing the pension. In respect of the ICJ, the pension is "the amount of that proportion of one half of the annual salary which the number of months of his or her actual service bears to one hundred and eight". In respect of ICTY, the basis for the computation is "that proportion of the annual pension which the number of months of his or her actual service bears to forty-eight".

II

The ICJ judge demits office on 17 November 2001 and receives an annual pension of approximately $37,000.00 by virtue of article 1 (4) of annex I. The ICTY judge demits office at the same time. By virtue of article 1 (2) (a) of annex II, because he has served the full-term of four years and has demitted office after 1 January 2001, he receives a pension of two ninths of the annual salary, that is, approximately $37,000.00. Again, this is as it should be, because the Statute requires equivalence in pension for the same years of service, which in this case is four years. Both judges have earned the same monthly, yearly and aggregate salary over that period.

III

The ICJ judge demits office on 17 November 2003, having served six years. He receives a pension of approximately $56,000.00 by virtue of article 1 (4) of annex I. The ICTY judge is re-elected in 2001 and demits office two years later on 17 November 2003. Since the ICTY judge came into office prior to 1 January 1999, he will receive a pension of approximately $44,000.00, because, by virtue of article 1 (2) (g) of annex II "he or she shall continue to receive one one-hundred-and-thirty-third of the International Tribunal's pension benefit for each further month subsequent to his or her initial term, up to a maximum pension equivalent to eight twenty-sevenths of the annual salary".

Although both judges have the very same years of service, six years, and although they have both earned the same monthly, yearly and aggregate salary over the period of six years, the ICTY judge receives a pension that is approximately $12,000.00 less than that of the ICJ judge — an outcome that is clearly not in keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

However, if an ICTY judge did not come into office prior to 1 January 1999 — and this is the case for all but two ICTY judges — and serves for six years he will receive the same pension of approximately $37,000.00 that he would have received had he demitted office after four years service. An example would be a judge coming into office in February 2000 and demitting in 2006. That is so because the effect of article 1 (2) (a) of annex II is to freeze the pension of an ICTY judge who ceases to hold office after 1 January 2001 at two ninths of the annual salary, that is, approximately $37,000.00. There is no progression in the pension of an ICTY judge who falls into this category, no matter how long he serves; his pension is fixed at $37,000.00 for a four-year term, even if he serves five, six, seven, eight or nine years. His pension after six years service is approximately $19,000.00 less than that of the ICJ judge with the same length of service — again, a situation that is not in keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

Moreover, the freezing of the pension of a judge who did not come into office prior to 1 January 1999 at approximately $37,000.00 also effects an internal inequality between judges of ICTY.

IV

The ICJ judge demits office on 17 November 2005, having served eight years: he receives a pension of approximately $75,000.00 by virtue of article 1 (4) of annex I. If the ICTY judge is re-elected in 2001, and demits office at the same time, having served the same eight years, he, having come into office prior to 1 January 1999, would, in the absence of the cap of eight twenty-sevenths of the annual salary set by article 1 (2) (g) of annex II, receive a pension of approximately $51,000.00. However, the application of the cap limits the pension to approximately $50,000.00. Effectively, therefore an ICTY judge's length of service has no influence on his pension after eight years of service.

Although both judges have the same years of service, eight years, and have earned the same monthly, yearly and aggregate salary for the period of eight years, the ICTY judge receives a pension that is approximately $25,000.00 less than that of the ICJ judge — an outcome that is clearly at variance with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

As bad as that is, it is worse for an ICTY judge who has served for eight years (two four-year terms), but did not come into office prior to 1 January 1999; for example, if he came into office in February 2000, and is re-elected once, but demits office at the end of eight years in 2008. His pension is the same $37,000.00 that he would have received had he demitted office at the end of his first four years. This is $38,000.00 less than the ICJ judge serving the same eight years — again, an outcome that is not in keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

V

The ICJ judge demits office after nine years service on 17 November 2006. By virtue of article 1 (2) (c) of annex I he receives a pension of half his salary, that is, $85,000.00. The ICTY judge demits office at the same time in 2006, having also

served nine years (after being re-elected twice). He receives a pension of approximately $50,000.00 that being the maximum pension payable by reason of the cap of eight twenty-sevenths of the annual salary set by article 1 (2) (g) of annex II. In the absence of the cap, the ICTY judge's pension would be approximately $54,000.00, which is still approximately $31,000.00 less than that of the ICJ judge.

Although both judges have the same years of service, nine years, and have earned the same monthly, yearly and aggregate salary during that period, the ICTY judge's pension is approximately $35,000.00 less than that of the ICJ judge — an outcome that is plainly at variance with the statutory requirement that the conditions of service of the ICTY judge be the same as those of the ICJ judge.

As bad as that is, it is worse for the ICTY judge who has served nine years, but did not come into office prior to 1 January 1999. If, for example, he came into office in February 2000, and demitted office in 2009, having been re-elected twice, his pension is caught by the "standstill" effect of article (1) (2) (a) of annex II, that is, it is frozen at two ninths of the salary, approximately $37,000.00, or $48,000.00 less than the pension of an ICJ judge, with the same length of service — again, an outcome that is plainly at variance with the statutory requirement that the conditions of service of the ICTY judge be the same as those of the ICJ judge.

VI

The ICJ judge demits office on 17 November 2007, that is, he is re-elected for a second term, and demits office one year thereafter. This situation is governed by article 1 (3) of annex I which provides:

> A member serving in office as from 31 December 1998, who has been or is re-elected, shall be entitled to an increase in the amount of the pension by one three-hundredth of the amount payable under paragraph 2 for each month of service in excess of nine years, provided that maximum retirement pension shall not exceed two thirds of his or her annual salary:
>
> (a) For the year 1999, a maximum of 81,600 dollars;
>
> (b) For the year 2000, a maximum of 95,200 dollars;
>
> (c) For the year 2001, two thirds of the annual salary, 106,667 dollars.

The ICJ judge, who demits office on 17 November 2007, is entitled to a pension of $88,000.00. Note that there is a cap on the pension, but it only comes into play after service in excess of nine years. The ICTY judge who also demits office on 17 November 2007 at the same time as the ICJ judge and after precisely the same years of service, will only receive a pension of $50,000.00, the ceiling set in article 1 (2) (g) of annex II, but which, be it remembered, is reached in the shorter period of eight years. This is the biggest disparity in the pensions — $38,000.00; it is clearly not in keeping with the statutory requirement that the conditions of service of the ICTY judge be the same as those of the ICJ judge; both judges have earned the same monthly, yearly and aggregate salary over the same period.

Of course, the disparity is even greater for the vast majority of ICTY judges whose service did not commence prior to 1 January 1999. If, for example, the ICTY judge who came into office in February 2000 and demitted office in 2009, he is subject to the "standstill" effect of article 1 (2) (a) of annex II, that is, his pension is

frozen at two ninths of the salary, approximately $37,000.00. This is a difference of $51,000.00, notwithstanding that both judges have the same number of years of service, and earned the same monthly, yearly and aggregate salary over that period — again, an outcome that is not in keeping with the statutory requirement that the conditions of service of the ICTY judge be the same as those of the ICJ judge.

Proposal/recommendation

It is respectfully submitted that by failing to give effect to the statutory principle of same pension for same years of service — equality in years of service produces equality in pension — the pension scheme has misinterpreted and misapplied the provision of article 13 bis (3) of the Statute. Accordingly, it is proposed that annex II to General Assembly resolution 58/264 be amended as follows:

(a) Delete article 1, paragraph 2, of annex II;

(b) Replace paragraph 2 with the following:

A judge of the ICTY shall receive the pension payable to a judge of the ICJ whose years of service are the same as the years of actual service of the ICTY judge.

Where an ICTY judge is re-elected, his years of actual service are determined by adding the period served after re-election to the period served prior to re-election.

Where an ICTY judge is elected or re-elected following an appointment, his years of actual service are determined by adding the period served after election or re-election to the period served prior to his election or re-election.

(*Signed*) Hans **Holthuis**
Registrar

(*Signed*) Fausto **Pocar**
President

Annex V

Letter dated 28 August 2006 from the Registrar and the President of the International Criminal Tribunal for Rwanda to the Secretary-General

The International Criminal Tribunal for Rwanda (ICTR) has previously pointed out the disparity between the pension entitlements of ICTR judges and judges of the International Court of Justice (ICJ), for instance in the memorandum from the ICTR President and Registrar of 27 April 2004 to the Assistant Secretary-General for Human Resources.

It follows from General Assembly resolution 59/282 of 13 April 2005 that this question will be reviewed during the sixty-first session. In a letter of 13 July 2006, the President and the Registrar of the International Criminal Tribunal for the Former Yugoslavia (ICTY) reiterated the concern of the ICTY judges because of the disparity in pensions between ICTY and ICJ judges. The ICTR judges fully subscribe to the views expressed in that letter, which applies mutatis mutandis to ICTR.

It is recalled that judges are elected to ICTR pursuant to Security Council resolution 955 (1994) of 8 November 1994. Article 12 bis (3) of the Tribunal's Statute, adopted pursuant to that resolution, provides:

> The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the permanent judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

The equivalent provision, article 13 bis (3) of the Statute of ICTY, provides in turn that the terms and conditions of service of ICTY judges shall be those of judges of the International Court of Justice.

This provision must be interpreted and applied so as to give effect to its purpose, which is to achieve equivalence between the conditions of service for ICTY and ICTR judges, and ICJ judges. The equivalence must be substantial, not merely formal, and relates not only to salary but also to pension.

The pension scheme for ICTY and ICTR judges does not reflect substantial equivalence with the pension for ICJ judges.

Properly interpreted, the substantial equivalence in pension called for by the Statute means that an ICTR judge should receive the same pension paid to an ICJ judge for the same years of service, i.e., equality in years of service should produce equality in pension; a pension scheme that does not achieve that result does not fulfil the statutory requirement that the terms and conditions of service of an ICTR judge are those of an ICJ judge, and has in fact misinterpreted the Statute. Thus an ICTR judge who has served three years, or four years or six or eight years should receive the same pension as an ICJ judge who has served the same number of years. It is irrelevant for this purpose that the ICJ term is nine years, while the ICTR term is four years. Neither an ICJ judge nor an ICTR judge is paid on the basis of his term of office. Salary is paid on an annual basis. Pension should not be determined by the term of office. An ICTR judge who has been re-elected should receive the

same pension as an ICJ judge with the same years of service. After all, article 12 bis (3) itself provides for re-election.

Regrettably, substantial equivalence in pensions for the ICTR and ICJ judge is not achieved in respect of an ICTR judge serving more than four years. The relevant document is annex I to General Assembly resolution 58/264 of 23 December 2003 for ICJ and annex III for ICTR.

In the letter from the ICTY of 13 July 2006, the disparity in pensions was illustrated by six cases of pension entitlements of ICTY and ICJ judges who come into office and demit office at the same time. These examples are applicable also at ICTR. A few minor contextual differences can nevertheless be observed between the situation of the ICTY, and the ICTR. First, the ICTY letter uses 18 November 1997, the date upon which ICTY judges took office following elections under the ICTY Statute, as the point of departure for these six illustrations. The equivalent dates for the election of ICTR judges are 25 May 1995 and 25 May 1999, respectively. Second, all but one ICTR judge came into office after 1 January 1999. The application of these six examples in the context of the ICTR is given below (see appendix to the present annex).

It is respectfully submitted that by failing to give effect to the statutory principle of same pension for same years of service — equality in years of service produces equality in pension — the pension scheme has misinterpreted and misapplied the provision of article 12 bis (3) of the Statute. Accordingly, it is proposed that annex III to General Assembly resolution 58/264 be amended as follows:

(a) Delete article 1, paragraph 2, of annex III;

(b) Replace paragraph 2 with the following:

A judge of the ICTR shall receive the pension payable to a judge of the ICJ whose years of service are the same as the years of actual service of the ICTR judge.

Where an ICTR judge is re-elected, his years of actual service are determined by adding the period served after re-election to the period served prior to re-election.

Where an ICTR judge is elected or re-elected following an appointment, his years of actual service are determined by adding the period served after election or re-election to the period served prior to his election or re-election.

(*Signed*) Adama **Dieng**
Registrar

(*Signed*) Erik **Møse**
President

Appendix to the letter dated 28 August 2006 from the Registrar and the President of the International Criminal Tribunal for Rwanda to the Secretary-General

Six illustrations

Example 1

The ICJ judge demits office after three years of service on 24 May 2002 and earns a pension of approximately $28,000.00 by virtue of article 1 (4) of annex I. The ICTR judge demits office at the same time in 2002, and earns the same pension of approximately $28,000.00 by virtue of article 1 (2) (f) of annex III. There is no disparity. This is as it should be, because both judges have the same years of service and earned the same monthly, yearly and aggregate salary over that period. The ICTR judge's pension, being the same as that of the ICJ judge, for the same years of service, fully implements the Statute which requires that his conditions of service be the same as those of the ICJ judge. However, the underlined words below indicate the significance attached by the pension scheme to the length of the term of office in computing the pension. In respect of ICJ, the pension is "the amount of that proportion of one half of the annual salary which the number of months of his or her actual service bears to one hundred and eight". In respect of ICTR, the basis for the computation is "that proportion of the annual pension which the number of months of his or her actual service bears to forty-eight".

Example 2

The ICJ judge demits office on 24 May 2003 and receives an annual pension of approximately $37,000.00 by virtue of article 1 (4) of annex I. The ICTR judge demits office at the same time. By virtue of article 1 (2) (a) of annex III, because he has served the full-term of four years and has demitted office after 1 January 2001, he receives a pension of two ninths of the annual salary, that is, approximately $37,000.00. Again, this is as it should be, because the Statute requires equivalence in pension for the same years of service, which in this case is four years. Both judges have earned the same monthly, yearly and aggregate salary over that period.

Example 3

The ICJ judge demits office on 24 May 2005, having served six years. He receives a pension of approximately $56,000.00 by virtue of article 1 (4) of annex I. The ICTR judge is re-elected in 2003 and demits office two years later in 2005. Since the ICTR judge came into office prior to 1 January 1999, he will receive a pension of approximately $44,000.00, because, by virtue of article 1 (2) (g) of annex III "he or she shall continue to receive one one-hundred-and-thirty-third of the International Tribunal's pension benefit for each further month subsequent to his or her initial term, up to a maximum pension equivalent to eight twenty-sevenths of the annual salary".

Although both judges have the very same years of service, six years, and although they have both earned the same monthly, yearly and aggregate salary over the period of six years, the ICTR judge receives a pension that is approximately $12,000.00 less than that of the ICJ judge — an outcome that is clearly not in

keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

However, if an ICTR judge did not come into office prior to 1 January 1999 — and this is the case for all but one ICTR judge — and serves for six years he will receive the same pension of approximately $37,000.00 that he would have received had he demitted office after four years service. An example would be a judge coming into office in May 1999 and demitting in 2006. That is so because the effect of article 1 (2) (a) of annex III is to freeze the pension of an ICTR judge who ceases to hold office after 1 January 2001 at two ninths of the annual salary, that is, approximately $37,000.00. There is no progression in the pension of an ICTR judge who falls into this category, no matter how long he serves; his pension is fixed at $37,000.00 for a four-year term, even if he serves five, six, seven, eight or nine years. His pension after six years service is approximately $19,000.00 less than that of the ICJ judge with the same length of service — again, a situation that is not in keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

Moreover, the freezing of the pension of a judge who did not come into office prior to 1 January 1999 at approximately $37,000.00 also effects an internal inequality between judges of ICTR.

Example 4

The ICJ judge demits office on 24 May 2003, having served eight years: he receives a pension of approximately $75,000.00 by virtue of article 1 (4) of annex I. If the ICTR judge is re-elected in 1999, and demits office at the same time, having served the same eight years, he, having come into office prior to 1 January 1999, would, in the absence of the cap of eight twenty-sevenths of the annual salary set by article 1 (2) (g) of annex III, receive a pension of approximately $51,000.00. However, the application of the cap limits the pension to approximately $50,000.00. Effectively, therefore an ICTR judge's length of service has no influence on his pension after eight years of service.

Although both judges have the same years of service, eight years, and have earned the same monthly, yearly and aggregate salary for the period of eight years, the ICTR judge receives a pension that is approximately $25,000.00 less than that of the ICJ judge — an outcome that is clearly at variance with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

As bad as that is, it is worse for an ICTR judge who has served for eight years (two four-year terms), but did not come into office prior to 1 January 1999; for example, if he came into office in May 1999, and is re-elected once, but demits office at the end of eight years in 2007. His pension is the same $37,000.00 that he would have received had he demitted office at the end of his first four years. This is $38,000.00 less than the ICJ judge serving the same eight years — again, an outcome that is not in keeping with the statutory requirement that his conditions of service be the same as those of the ICJ judge.

Example 5

The ICJ judge demits office after nine years service on 24 May 2004. By virtue of article 1 (2) (c) of annex I he receives a pension of half his salary, that is,

$85,000.00. The ICTR judge demits office at the same time in 2004, having also served nine years (after being re-elected twice). He receives a pension of approximately $50,000.00 that being the maximum pension payable by reason of the cap of eight twenty-sevenths of the annual salary set by article 1 (2) (g) of annex III. In the absence of the cap, the ICTR judge's pension would be approximately $54,000.00, which is still approximately $31,000.00 less than that of the ICJ judge.

Although both judges have the same years of service, nine years, and have earned the same monthly, yearly and aggregate salary during that period, the ICTR judge's pension is approximately $35,000.00 less than that of the ICJ judge — an outcome that is plainly at variance with the statutory requirement that the conditions of service of the ICTR judge be the same as those of the ICJ judge.

As bad as that is, it is worse for the ICTR judge who has served nine years, but did not come into office prior to 1 January 1999. If, for example, he came into office in May 1999, and demitted office in 2008, having been re-elected twice, his pension is caught by the "standstill" effect of article (1) (2) (a) of annex III, that is, it is frozen at two ninths of the salary, approximately $37,000.00, or $48,000.00 less than the pension of an ICJ judge, with the same length of service — again, an outcome that is plainly at variance with the statutory requirement that the conditions of service of the ICTR judge be the same as those of the ICJ judge.

Example 6

The ICJ judge demits office on 24 May 2005, that is, he is re-elected for a second term, and demits office one year thereafter. This situation is governed by article 1 (3) of annex I which provides:

> A member serving in office as from 31 December 1998, who has been or is re-elected, shall be entitled to an increase in the amount of the pension by one three-hundredth of the amount payable under paragraph 2 for each month of service in excess of nine years, provided that maximum retirement pension shall not exceed two thirds of his or her annual salary:
>
> (a) For the year 1999, a maximum of 81,600 dollars;
>
> (b) For the year 2000, a maximum of 95,200 dollars;
>
> (c) For the year 2001, two thirds of the annual salary, 106,667 dollars.

The ICJ judge, who demits office on 24 May 2005, is entitled to a pension of $88,000.00. Note that there is a cap on the pension, but it only comes into play after service in excess of nine years. The ICTR judge who also demits office on 24 May 2005, at the same time as the ICJ judge and after precisely the same years of service, will only receive a pension of $50,000.00, the ceiling set in article 1 (2) (g) of annex III, but which, be it remembered, is reached in the shorter period of eight years. This is the biggest disparity in the pension — $38,000.00; it is clearly not in keeping with the statutory requirement that the conditions of service of the ICTR judge be the same as those of the ICJ judge; both judges have earned the same monthly, yearly and aggregate salary over the same period.

Of course, the disparity is even greater for the vast majority of ICTR judges whose service did not commence prior to 1 January 1999. If, for example, the ICTR judge who came into office in May 1999 and demitted office on 31 December 2008, he is subject to the "standstill" effect of article 1 (2) (a) of annex III, that is, his

pension is frozen at two ninths of the salary, approximately $37,000.00. This is a difference of $51,000.00, notwithstanding that both judges have the same number of years of service, and earned the same monthly, yearly and aggregate salary over that period — again, an outcome that is not in keeping with the statutory requirement that the conditions of service of the ICTR judge be the same as those of the ICJ judge.